164

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 124

HOTEL & RESTAURANT EMPLOYEE'S INTERNATIONAL ALLIANCE, LOCAL No. 122, ET AL., PETITIONERS.

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED JUNE 3, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

INDEX.

	Rec. Page	Case Page
Affidavits in opposition to request for stay of judgment	103	52
Affidavits in opposition to motion for immediate enforcement	52	12
Affidavits in support of motion for immediate enforcement of Board's order	48	11
Affidavits in support of order to show cause why judgment should not be stayed	99	52
Amendment to findings of fact and order	855	271
Answer to complaint filed with Wisconsin Employment Relations Board	143	70
Answer and cross petition	14	6
Answer to cross petition	33	11
Certificates of official reporter	805	242
	835	251
Certificate of Wisconsin Employment Relations Board	126	58
Certificate of Wisconsin Employment Relations Board	861	272
Complaint before Wisconsin Employment Relations Board	129	58
Decision of Circuit Court	58	12
Decision of Wisconsin Employment Relations Board	847	262

	Rec. Page	Case Page
Direction of election	857	272
Exhibit A attached to petition and cross complaint, being copy of findings of fact, conclusions of law, and order of Wisconsin Employment Relations Board	20	11
Findings of fact, conclusions of law, and order	837	251
Judgment	91	47
List of eligibles	864	272
Memorandum decision of Circuit Court	58	12
Notice of appeal	122	57
Notice of entry of order granting qualified stay of judgment	116	57
Notice of hearing	141	70
Notice of opposition to motion for immediate enforcement	52	12
Notice of return to Circuit Court and motion for immediate enforcement of Board's order	45	11
Order granting qualified stay of judgment	111	52
Order permitting Plankinton House Company to appear in proceedings before Circuit Court	37	11
Order to show cause why judgment should not be stayed	97	52
Petition for review	2	2

	Rec. Page	Case Page
Petition to appear, argue, and file briefs as amicus curiae, and order granting same	39	11
Petition for intervention by Independent Union of Plankinton House Employees	155	80
Petition of Independent Union of Plankinton House Employees for determination of representation	158	80
Qualified stay of judgment	117	57
Record of proceedings before the Wisconsin Employment Relations Board	125	58
Result and certification	867	272
Sample ballot	863	272
Summons	1	2
Testimony.		
Addis, Charles—		
Direct examination	306	124
Cross-examination	307	125
Direct examination	323	129
Alexander, John—		
Adverse examination	229	95
Cross-examination	235	97
Direct examination	723	224
Cross-examination	740	227
Redirect examination	751	230
Recross-examination	752	230
Redirect cross-examination	752	230
Recross-examination	755	231
Redirect examination	756	231

	Rec. Page	Case Page
Altman, Bertha—		
Direct examination	333	134
Cross-examination	334	134
Banning, Wayne—		
Direct examination	278	112
Cross-examination	280	113
Barrett, Edna—		
Direct examination	719	223
Cobeen, Charles—		
Direct examination	288	114
Cross-examination	293	118
Corey, Halsey—		
(Testimony omitted because it relates to Independent Union.)		
Dunham, Roy—		
Direct examination	659	209
Cross-examination	660	209
Redirect examination	666	211
Recross-examination	667	211
Redirect examination	667	212
Fairweather, Ruth—		
Direct examination	686	215
Cross-examination	688	216
Gamby, Alfonso (Al)—		
Direct examination	327	131
Cross-examination	328	131
Direct examination	689	216
Cross-examination	693	218

	Rec. Page	Case Page
Gomillion, Otis—		
Direct examination	653	206
Cross-examination	654	207
Redirect examination	655	207
Recross-examination	657	208
Redirect examination	658	208
Hehmeyer, Peggy—		
Direct examination	248	103
Cross-examination	251	105
Direct examination	777	236
Questioned by Mr. Burns	781	237
Direct examination (continued)	781	238
Cross-examination	785	238
Redirect examination	804	242
Heisdorf, John—		
Direct examination	223	92
Cross-examination	228	94
Adverse examination	229	95
Direct examination	702	219
Cross-examination	711	221
Direct examination	717	222
Direct examination	759	232
Cross-examination	764	233
Redirect examination	768	234
Direct examination	832	250
Hundt, Elmer—		
Direct examination	360	146
Cross-examination	363	147
James, Thomas—		
Direct examination	353	143
Cross-examination	356	144
Redirect examination	357	144

	Rec. Page	Case Page
Jeske, Robert—		
Direct examination	275	111
Cross-examination	276	112
Klimek, Gerald—		
Direct examination	310	126
Cross-examination	311	126
Redirect examination	323	129
Direct examination (recalled)	328	131
Knopf, Edward—		
Direct examination	357	144
Cross-examination	358	145
Knoop, Robert—		
Direct examination	676	212
Cross-examination	680	213
Redirect examination	681	213
Recross-examination	681	213
Komes, William—		
Direct examination	239	100
Cross-examination	241	101
Langdon, Fred—		
Direct examination	365	148
Cross-examination	366	149
McLaughlin, Charles—		
Adverse examination	217	90
Cross-examination	220	91
Minor, Elizabeth—		
Direct examination	326	130
Mueller, Joseph—		
Direct examination	245	102
Cross-examination	247	103

	Rec. Page	Case Page
Myrick, James—		
Direct examination	350	141
Cross-examination	352	142
Peckman, Matt—		
Direct examination	713	221
Polcyn, John W.—		
Direct examination	606	193
Cross-examination	611	194
Redirect examination	615	197
Recross-examination	617	198
Raasch, Lester—		
Direct examination	335	135
Cross-examination	340	137
Richardson, Emmet L.—		
Direct examination	596	189
Direct examination (continued)	627	201
Cross-examination	643	205
San Miguel, Dan—		
Direct examination	619	198
Cross-examination	621	199
Redirect examination	625	200
Examination by Commissioner Gooding	625	200
Recross-examination	626	201
Redirect examination	627	201
Stachowiak, Frank—		
(Testimony omitted because it relates to the interstate activities of the hotel, which are not pertinent on this appeal)	668	212

	Rec. Page	Case Page
Staffaroni, Vincent—		
Direct examination	373	152
Cross-examination	375	153
Stano, Rudolph—		
Direct examination	368	149
Cross-examination	369	150
Thie, Margaret—		
Direct examination	681	214
Cross-examination	685	215
Traisman, Sam—		
Direct examination	298	121
Cross-examination	301	122
Redirect examination	303	123
Questioned by Commissioner Gooding	304	123
Recross-examination	304	124
Valley, Phil—		
Direct examination	184	83
Recalled adversely	376	153
Direct examination	376	153
Van, Gladys—		
Direct examination	721	223
Van, Ruby—		
Direct examination	324	130
Cross-examination	325	130
Van Houten, John W. B.—		
Direct examination	770	235
Cross-examination	772	235
Weber, Harvey—		
Direct examination	342	138
Cross-examination	347	140

	Rec. Page	Case Page
Werwath, Earl—		
Direct examination	295	119
Cross-examination	298	121
Whitney, Ward—		
Direct examination	370	150
Cross-examination	371	151
Redirect examination	372	151
Recross-examination	372	152
Wood, Hiram O.—		
Direct examination	379	154
Examination resumed	386	157
Cross-examination	389	159
Adverse examination	404	163
(This testimony is omitted because it deals with the question of interstate commerce. That issue has been abandoned by the petitioner for the purpose of this appeal.)		
(This testimony omitted since it relates to the application of the Independent Union for an election and certification which is not a factual issue on this appeal)	429	163
(This testimony omitted because it deals with the question of interstate commerce, which issue is abandoned for the purpose of this appeal)	465	163

	Rec. Page	Case Page
(Testimony omitted because it relates to the petition of the Independent Union)	495	163
(Testimony omitted since it bears upon questions relating to the Independent Union)	501	164
Adverse examination	506	164
Adverse examination	512	166
Examination resumed—		
Direct examination	568	183
Direct examination	643	206
Redirect examination	806	243
Recross-examination	824	248
Redirect examination	830	249
Ziebell, Paul—		
Direct examination	329	132
Cross-examination	331	133

Exhibits.

Of Complainant:

		Rec. Page	Case Page
1.	Copy of 1938 labor contract	185	83
2.	Union notice to continue 1938 contract	186	83
3.	Copy of notice sent to Union by company	187	83
4.	Letter dated May 29, 1939, sent by Union to company	188	84
5.	Copy of revisions sent to company by Union	188	84

		Rec. Page	Case Page
Of Complainant:			
No.			
6.	Copy of company's suggested revisions	189	84
7.	Letter from Union demanding arbitration	189	84
8.	Application to Board for appointment of fifth arbitrator	190	84
9.	Copy of decision of Arbitration Board	191	84
10.	Copy of letter of company, accepting award	191	84
11.	Letter from Union acknowledging letter from company	192	84
12.	Letter sent by Mr. Valley to company, November 11, 1939	194	84
13.	Letter sent by Mr. Valley to company, November 28, 1939	194	84
14.	List of employes of Plankinton Hotel	206	87
15.	List of employes of Kilbourn Hotel	206	87
16.	Proposed notice of revision by Union of 1937 contract	286	114
17.	Original 1937 contract	286	114
18.	Minutes of arbitrators on June 16, 1938	286	114
19.	Transcript of testimony in 1938 matter	286	114

		Rec. Page	Case Page
Of Complainant:			
No.			
20.	Five nails picked up at parking station	363	147
21.	Letter read by Mr. Wood to his employes	382	156
22.) 23.)	Pictures of broken window pane and sash	385	157
53.	Classification of hotels	629	2[illegible]
54.	Minutes of negotiations	629	201
56.	Affidavit signed by Mr. Stachowiak	671	212
59.	Copy of signed list appended to 1937 contract	781	238
60.	List of names of parking station attendants	809	244
61.) 62.) 63.)	Copies of letters sent to union during 1937	817	247
64.) 65.)			
66.	Voucher and invoice from printer, amount, $26	822	247
68.	List of concerns from which company purchased liquor and wines	831	249
Of Respondent:			
24.	List of employes dated June 16, 1938	389	159

		Rec. Page	Case Page
Of Respondent:			
No.			
25.) 26.))	Two lists of firms outside of Wisconsin from whom company purchased goods	411	163
39.) 40.) 41.) 42.)	Telegrams sent to four individual employes by the company	519	169
43.	Check, dated February 6, 1939, signed by Mr. Wood	570	184
44.	Record of registration at hotel January-November, 1939	573	184
45.	List of long-distance calls placed at hotel	575	184
46.	Registration card of Plankinton House	580	184
47.) 48.) 49.) 50.)	Copies of letters sent employes by company	588	186
51.	Letter to company, dated November 12, 1939	589	187
52.	Printed editorial	593	188
55.	Copy of supplemental agreement signed by hotels	629	201
57.	Form letter sent out by Milwaukee Hotel Association	718	222
58.	Letter, dated November 25, from Independent Union to one of employes	718	222

		Rec. Page	Case Page
Of Respondent:			
No.			
67.	Invoice of company in connection with printing	827	248
Of Independent Union:			
27.	Minute book of Independent Union	433	163
28.	Application for membership cards of Independent	434	163
29.	Articles and by-laws of Independent	435	163
30.	Petition signed by employes interested in Independent	437	163
31.	Recognition agreement of Independent	438	163
32.	Copy of recognition agreement with memorandum on back	460	163
33.	Bank book of Independent	461	163
34.	Check book of Independent	462	163
35.	Partial list of paid members of Independent	462	163
36.) 36A)	Two receipt books of treasurer of Independent	462	163
37.	Ledger of individual members of Independent	462	163
38.	Expense ledger of Independent	462	163

STATE OF WISCONSIN

IN SUPREME COURT

August Term, 1940. No. .....

HOTEL & RESTAURANT EMPLOYEES' INTERNATIONAL ALLIANCE, LOCAL NO. 122; PHIL L. VALLEY, JOHN ALEXANDER, and JACK HEISDORF, each Individually, as Business Agent, Organizer, and Vice-President, Respectively, for, and as representatives of all the Members of Hotel and Restaurant Employees' International Alliance, Local No. 122;

INTERNATIONAL LAUNDRY WORKERS, LOCAL NO. 174;

BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, LOCAL NO. 64, sometimes known as International Bartenders & Beverage Dispensers, Local No. 64;

INTERNATIONAL UNION OPERATING ENGINEERS, LOCAL NO. 311;

MILWAUKEE BUILDING TRADES COUNCIL,

All Affiliated with the American Federation of Labor,

Petitioners and Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD; HENRY C. FULDNER, individually and as Chairman of, L. E. GOODING, individually and as a member of, R. FLOYD GREEN, individually and as a member of the Wisconsin Employment Relations Board,

Respondents.

CASE.

This is an appeal from the judgment of the Circuit Court of Milwaukee County, Honorable Gustave G. Gehrz, presiding, entered on the 14th day of May, 1940, sustaining, confirming and en-

RECORD PAGE

forcing the final order of the Wisconsin Employment Relations Board, and the findings and conclusions of said Board dated February 15, 1940.

1 **Summons.**

2 **PETITION FOR REVIEW.**

(Venue and title omitted.)

The petitioners above named, by Padway, Goldberg & Tarrell, their attorneys, join collectively in this petition and respectfully pray that the Honorable Circuit Court in and for Milwaukee 3 County, Wisconsin, review the findings, orders and decision made by the Wisconsin Employment Relations Board in the proceeding before the Wisconsin Employment Relations Board, entitled "Plankinton House Company, a Wisconsin corporation, Complainant, v. Hotel & Restaurant Employees International Alliance, Local No. 122, et al., Respondents," being case No. 78 Cw-4, before the said Wisconsin Employment Relations Board, which findings, orders and decision were made and filed by the said Wisconsin Employment Relations Board on February 15, 1940.

Petitioners show to this Honorable Court that the grounds upon which review is sought are:

That said findings of fact are not supported by credible and competent evidence in the record;

That such findings are erroneous, contrary to fact, and contrary to law;

That the Wisconsin Employment Relations

Board made its findings and orders based on erroneous conclusions of law;

That the Wisconsin Employment Relations Act, known as Chapter 57 of the Laws of the State of Wisconsin 1939, is unconstitutional and void in whole and in part;

That the Wisconsin Employment Relations Board, as an administrative body, is unconstitutionally constituted and has no status in law or in fact;

That the orders appealed from are violations of constitutionally guaranteed rights of petitioners and the membership of said petitioning unions, and, therefore, unconstitutional and void;

That the Wisconsin Employment Relations Board had no jurisdiction over the subject matter hereof, and Chapter 57, Laws of 1939, repealing and recreating chapter 111 of the statutes, is unconstitutional and void if applicable to the parties herein, for the reason that the subject matter and the parties in the proceedings before the Wisconsin Employment Relations Board were and are subject to the jurisdiction of the National Labor Relations Board and the National Labor Relations Act, creating the National Labor Relations Board (U. S. Code, Title 29, Chapter 7, Paragraphs 151 through 166);

That the complaint of the complainant in the proceedings before the Wisconsin Employment Relations Board charged the respondent unions with no violation of law described or set forth in Chapter 57 of the Laws of 1939, did not and does

not state a cause of action with respect to such unions, and the Board was and is, therefore, without jurisdiction to issue the order herein;

The order was void and of no effect whatsoever, and the Board had no jurisdiction to issue the same in so far as it is applicable to and runs against individual striking employees of the Plankinton House Company, a Wisconsin corporation, for the reason that such employees were not specifically named in such complaint, and were not served with notice of the proceedings before the Board, and such order, therefore, destroys for such individual employees valuable contract, property, and natural rights guaranteed without due process of law, contrary to the provisions of Article I of the Constitution of the State of Wisconsin, and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States;

That such order is in violation of the contract rights of the respondent unions and constituted an abrogation and denial of such contract rights, contrary to law, contrary to Article I of the Constitution of the United States, contrary to Article I of the Constitution of the State of Wisconsin, and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States;

That the Wisconsin Employment Relations Board had no jurisdiction over the persons to and subject matter of this action and no authority to issue the order herein, and such order is, therefore, null and void for the reason that under the

terms and provisions of Chapter 57 of the Laws of 1939, under which the Wisconsin Employment Relations Board purportedly acted such Board is deprived of jurisdiction, and such act does not apply to relationships and permissive courses of conduct fixed by contract and law prior to the effective date of the aforesaid Chapter 57, Laws of 1939;

The order of the Board deprives the respondent unions, the officers, individual members thereof, and individual employees of the Plankinton House Company, a Wisconsin corporation, of freedom of speech and assemblage, guaranteed to and preserved for them by the Constitution of the State of Wisconsin and the Constitution of the United States of America, and is in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of Article I of the Constitution of the State of Wisconsin;

That the relief granted to the Plankinton House Company by the Wisconsin Employment Relations Board is contrary to principles of law and equity, and is not subject to enforcement by this court because it is contrary to the laws of the State of Wisconsin heretofore made and provided, and known as Sections 103.51 through 103.62 of the Wisconsin Statutes, 1937.

Wherefore, your petitioners pray that a hearing be had in accordance with law in such cases made and provided for; that the findings of said board be set aside; that the orders of said board be set aside; and that Chapter 57 of the Laws

of the State of Wisconsin, 1939, be declared unconstitutional and void, and for such other and further relief which shall be just and equitable in the premises.

6–10 Verifications.

11 Proof of service.

12 Cover.

13 **Admission of service to answer and cross-petition of Wisconsin Employment Relations Board.**

14 **ANSWER AND CROSS PETITION.**

(Venue and title omitted.)

Now comes the Wisconsin Employment Relations Board, one of the respondents in the above-entitled matter, by John E. Martin, Attorney-General; James Ward Rector, Deputy Attorney-General, and N. S. Boardman, Assistant Attorney-General, and for answer to the petition herein admits, denies and alleges as follows:

15 1. Admits the entry of the order complained of.

2. Denies that the order complained of is void or unlawful for any of the reasons set forth in said petition or for any other reason, and in this connection alleges that the order complained of is a valid and lawful order. Specifically denies that the employer's business is such as to subject him to the terms and provisions of the National Labor Relations Act or to the jurisdiction of the Na-

tional Labor Relations Board in any way, shape or manner.

Wherefore, this answering respondent prays that the petition be dismissed and that a judgment be entered affirming and enforcing the amended order complained of.

CROSS PETITION.

Further answering, and for a cross petition, the respondent, Wisconsin Employment Relations Board, pursuant to the authority conferred upon it by the provisions of Ch. 57, Laws of 1939, respectfully petitions the Court for the enforcement of the amended order complained of in the petition for review. In support of this petition the Board respectfully alleges and shows:

1. That the Wisconsin Employment Relations Board (hereinafter referred to as the Board) is and at all times mentioned herein was an administrative body, created by Ch. 57, Laws of 1939, and that Henry C. Fuldner is the chairman and L. E. Gooding and R. Floyd Green are commissioners or members of said Board.

2. That the Plankinton House Company (hereinafter referred to as the Company) is a corporation duly organized under the laws of the State of Wisconsin, having its principal office at 609 North Plankinton avenue, Milwaukee, Wisconsin, and that said Company operates the Plankinton House and the Kilbourn Hotel, both located in the City of Milwaukee, Wisconsin, together with three automobile parking lots in said city.

3. That the Hotel and Restaurant Employees International Alliance, Local 122, Bartenders International League of America, Local No. 64, International Laundry Workers, Local No. 174, and International Union Operating Engineers Local No. 311, are voluntary incorporated associations, each of which is affiliated with the American Federation of Labor.

4. That the Milwaukee Building Trades Council is a central labor organization composed of various labor unions in the City of Milwaukee, Wisconsin, having as members persons employed in the building trades, all of which labor unions are affiliated with the American Federation of Labor; that the organizations referred to in this and the preceding paragraph will hereinafter be referred to as "the Unions."

5. That the independent organization of the Plankinton House employees is an unaffiliated labor organization, admitting to membership all employees of the Company, except officers, directors, executives and supervisors, and was organized on the 21st day of November, 1939.

6. That on or about the 20th day of November, 1939, the Company filed complaint with the Board charging the Unions, the officers and agents thereof and the members thereof with unfair labor practices, to wit, violation of Sec. 111.06 (2) (a), (e), (f), (g), (h) and (j) and Sec. 111.04 of the Employment Peace Act.

17 7. That the Unions, their officers and agents, answered in substance, denying such unfair labor

practices and raising certain constitutional issues with respect to the validity of Ch. 57, Laws of 1939 (The Employment Peace Act).

8. That after due notice of hearing, a hearing was held before the Board on December 1st, 11th, 12th, 13th and 14th, 1939.

9. That on the first day of said hearing, the independent organization of the Plankinton House employees, Milwaukee, Wisconsin, appeared by its attorney, George Burns, and requested leave to intervene in said matter and also file a petition with the Board, alleging that a question of representation existed with respect to the employer Company and further alleging that this organization as an independent unaffiliated organization nonemployer sponsored represented a majority of the employees in the unit appropriate for collective bargaining and that said organization was entitled to and should be certified as the sole representative of the employees of the Company for purposes of collective bargaining. The Board permitted such intervention and the filing of said petition and ordered that testimony be taken with reference thereto at the said hearing then in progress in relation to the alleged unfair labor practices.

10. That on the 15th day of February, 1940, the Board made and filed its findings of fact, conclusions of law and order with reference to said matters (charges of unfair labor practices), a true and correct copy of which is attached hereto, marked "Exhibit A" and made a part hereof; that said

order and findings were amended to cover inadvertent errors, a true and correct copy of which said amended findings and order is attached hereto, marked "Exhibit B" and made a part hereof.

11. That copies of said findings, conclusions and orders of the Board were duly served on the Unions, the officers and agents thereof; that said amended order, since its issuance and service, has been in full force and effect; that the Unions and the officers and agents thereof have not notified the Board in writing within the time required in said order what steps have been taken to comply with said order, but on the contrary have petitioned this court for a review of said order in which petition the said Unions seek to set aside said order; that the Board is informed and believes that the Unions and the officers and agents thereof have taken no steps to comply with the terms of said order and have not ceased and desisted from the unfair labor practices which the order required them to cease and desist from.

12. That the Board has caused to be certified and filed with this court a complete record in the proceedings, including all documents and papers on file in the said matter, the pleadings and testimony upon which said order was entered, and the findings and order of the Board to which record reference is hereby made and the said record incorporated herein.

Wherefore the Board prays that the court enter an order confirming and enforcing all provisions

of the order as amended herein referred to, that
19 the petitioners' complaint be dismissed and for such other relief as the facts and circumstances may warrant.

20-32 **Exhibit A attached to petition and cross complaint being copy of findings of fact, conclusions of law, and order of Wisconsin Employment Relations Board is not set forth herein, being set forth in this case at pages 251-262** (Record 837-846).

33-34 **Answer to cross petition.**

35 **Verification of the above.**

36 **Cover.**

37-38 **Order permitting Plankinton House Company to appear in proceedings before Circuit Court.**

39- **Petition to appear, argue, and file briefs as**
42 **amicus curiae, and order granting same.**

43 **Cover.**

44 **Admission of service.**

45- **Notice of return to Circuit Court and motion for**
47 **immediate enforcement of Court's order.**

48-50 **Affidavit in support of the above.**

51 **Cover.**

52– **Notice of opposition to motion for immediate**
53 **enforcement.**

54–56 **Affidavits in support thereof.**

57 **Cover.**

58–89 **MEMORANDUM DECISION.**

(Venue and title omitted.)

These actions, instituted upon petitions for review, have been thoroughly presented on both facts and law on behalf of all immediate parties
59 named in the title and others to whom due leave was granted. Oral arguments were made on April 8th, and 9th, 1940. Able and comprehensive briefs were submitted between April 20th, and May 1st, 1940 containing exhaustive and most helpful reviews of pertinent federal and state authorities. To again cite these in this memorandum is deemed unnecessary.

The court also has before it findings and opinions recently filed in this circuit in the following cases dealing with the subject and issues here considered:

No. 167-639, Wisconsin Employment Relations Board vs. Allen-Bradley Local No. 1111 (a similar review proceeding);

No. 169-311, Ward Whitney et al. vs. Local No. 122 of the Hotel & Restaurant Employees' etc. Alliance et al. (Plaintiffs are a few of the employees affected by the instant proceedings, who were denied separate equitable relief);

No. 170-287, New Hostess Ice Cream Company, vs. Milwaukee Building & Construction Trades Council. (An equity case involving simple advertising or publicity and the application of the clean hands doctrine.)

The matter first referred to (No. 167-639), like the actions at bar, was a proceeding for the review and enforcement of findings and an order of the Wisconsin Employment Relations Board, the members of which are respondents here. The constitutionality of the present "Employment Peace Act" of this State (Chap. 57, Laws of 1939; Chap. 111, Stats. of 1939) was there attacked upon several grounds again urged now. Since the Act in question is not a purely local one affecting only this county or circuit, the determination made in said action No. 167-639 by Hon. Otto H. Breidenbach, although the presiding judge of a co-ordinate branch of this court, need not be deemed binding or conclusive here. However, no conflict between the two branches of the court will result because the writer, after careful consideration, agrees with the conclusion of said branch No. 1 sustaining the validity of said "Employment Peace Act."

The action second referred to (No. 169-311) was brought in equity by only five employes at the Plankinton House, the larger hotel operated by the Plankinton House Company, one of the employers who had previously filed its own complaint herein with the Wisconsin Employment Relations Board charging the unfair labor prac-

tices now brought here for review. Said employer Company was not a party in said employes' suit. The attack upon the constitutionality of the "Employment Peace Act" now made was sought to be sustained in that suit but was expressly reserved for determination in the instant review proceeding with all, and not only a small number, of the parties vitally affected before the court and accorded their just and adequate opportunity to be heard.

It must be noted at the outset that the cases at bar are not concluded by, but are separate and distinct from, said equity suit (No. 169-311) for reasons there made to appear in the court's writ-
61 ten opinion filed February 15th, 1940 (pp. 9 to 12), and because the controversy now comes before the court, sitting as an appellate tribunal, for the review of the findings, conclusions and order of the Board as a special administrative tribunal charged by statute with the duty of hearing and determining such industrial disputes (Century Bldg. Co. vs. Wis. Employment Relations Board [Wis.], 291 N. W. Rep. 305, at 308-309, decided April 9, 1940).

In this connection, it must be borne in mind that the denial of injunctive relief in that action upon stated equitable grounds obviously is not binding or conclusive in the actions at bar. The findings of the Board are by statute accorded a definite status; they must be deemed "conclusive" at this time "if supported by credible and competent evidence in the record." [Sec. 111.07 (7), Stats.] This limitation of the court's func-

tion excludes the exercise of its general equity powers by virtue of which suits originally presented are heard, tried and determined by it. Certain legal conclusions reached and announced in said employes' action are, however, pertinent and will be adhered to and followed in these proceedings.

The validity of the so-called "Catlin Act" (Chapter 25, Laws of 1939) has not been directly challenged in the instant litigation, albeit the definition of a "labor dispute" therein laid down [Sec. 103.62 (3), Stats.] is the same as that contained in Sub-sec. (8) of Sec. 111.02, Stats. So much of said "Catlin Act" as now comprises Section 103.535, Stats. would also seem to be
62 affected by the determination of the valid scope and meaning of the phrase "picket, or induce others to picket" there used.

The New Hostess Ice Cream Company case (No. 170-287, the third referred to) was dismissed because it involved trivial and inconsequential acts and called for application of the clean hands doctrine. The acts complained of consisted of truthful radio announcements or appeals (finding 15) and the display by single individuals called "sandwich-men" of canvas signs worn as aprons truthfully announcing on both the front and rear thereof that the plaintiff company was unfair to union labor. Primarily these signs were carried in the manner stated about the principal thoroughfares of the City of Milwaukee and only occasionally in the vicinity of the employer's location or of stores handling its products. The court's finding (No. 14) also states:

"All such patrolling and advertising was peaceful and without commotion or disorder of any kind. No threats of physical harm or economic loss and no molestation or harassment were made or indulged in. No show of numbers and no measures tending to coerce or intimidate anyone and no violence or breaches of the peace, or threats thereof, were made or indulged in. The free use of streets and entrances was not interfered with." [See: 103-53 (1) (e), Stats.]

The conduct described fell squarely within the definition of "fair persuasion" in Section 779 of the Restatement of the Law of Torts which is there stated to

"mean argument, exhortation or entreaty addressed to a person without

(a) threat of physical harm or economic loss, or

63 (b) molestation or harassment, or

(c) material and fraudulent misrepresentations."

The following "comment" lettered (i) (Page 111) is also deemed pertinent:

"On the other hand, general advertising away from a particular place directly or indirectly involved in the dispute, even though carried on by means of moving or stationary placarded men, is not picketing, though it may be fair persuasion if it complies with the standards stated in Subsection (1)."

All possible doubt with respect to the correctness of the foregoing views have been set at rest

by two decisions of the Supreme Court of the United States handed down on April 22nd, 1940. They are:

Thornhill vs. State of Alabama, 84 L. ed. 659;
Carlson vs. California, 84 L. ed. 668.

See, also:

Milwaukee E. R. & L. Co. vs. Pallange, 205 Wis. 126, 132, 134;
Schneider vs. State and Snyder vs. City of Milwaukee (Nov., 1939), 84 L. ed. 115, 117-118, 120-122;
Senn vs. Tile Layers Protective Union, 301 U. S. 468, 81 L. ed. 1229, at 1236.

In Wisconsin Labor R. Board vs. Fred Reuping L. Co. 228 Wis. 473, at P. 495, the defendant **employer** asserted that the board (the trier of fact) had assumed it to be improper for the employer to have any contact with his employees or engage in any conversation with them respecting union matters and

> "• • • claimed that this is contrary to the act, and, if not, that the act is unconstitutional as violating defendant's right of free speech."

The Supreme Court dealt with this contention by adopting as a standard, and quoting from, Texas & New Orleans R. Co. vs. Brotherhood
64 of Railway & Steamship Clerks, 281 U. S. 548, 568, 74 L. ed. 1034, in which the import and effect of the phrase "without interference, influence, or coercion" had been considered. The quotation

referred to these terms as "well-understood concepts of the law" and proceeded to demonstrate that reference as correct. Following that quotation, the writer of the opinion in the Rueping case, on P. 496, adds clarity to the ruling by means of the following statement which, if slightly paraphrased, fits the situation now before us:

> "There is little to add to the foregoing analysis. The right of free speech has never been considered to make impossible civil remedies or criminal prosecution for libel, duress, or fraud, although speech was the agency in each case. The distinction between the exercise by an employer of his right of freedom of speech and the actual use of the spoken word **as an instrumentality to overpower the will of employees is well understood, and constitutes the dividing line between what an employer may do and what he may not do.** It may, of course, be difficult to determine in a particular case on which side of the line the activities of a particular employer fall, **but this must be left to the trier of fact if there is room for conflicting inferences.** We have reviewed carefully the evidence which was **before the board and conclude that there is evidence to support the board's conclusion** that the conduct of defendant was deliberately devised and calculated **to override the will of its employees;** that the company authorized its foreman to conduct activities in favor of the company union and against outside unions; and that the defendant, through its officers and agents, intentionally created the impression that membership in an outside union might

result in discharge or in a shutdown of the plant. No useful purpose would be served by extending this opinion to include an analysis of the evidence in detail, and we merely indicate our conclusions **as to what the evidence** tends to prove."

65 "Peaceful picketing or patrolling" whenever accorded legal sanction (Subd. (1) of Sec. 103.53 (1) Stats.; Annotation 124 A. L. R. 751; Lauf vs. E. G. Shinner & Co., 303 U. S. 323, 82 L. ed. 872, 877; Senn vs. Tile Layers Prot. Union, 301 U. S. 468, 81 L. ed. 1229, 1236; Am. Furn. Co. vs. General Local Union, etc., 222 Wis. 338, 366-371), has invariably been conditioned upon the absence of intimidation or coercion, or any method involving fraud, violence, breach of the peace, threat thereof, or interference with the free use of streets and entrances. Here again, as in the case of controversies respecting "fair persuasion," the trier of fact has the advantage of observing the witnesses and their bearing, demeanor and credibility. He may justly deem credible what a reviewing tribunal is without power to cast out as incredible. This subject was dealt with in Century Building Co. vs. Wis. Employment Relations Board (Wis.), 291 N. W. 305, Par. 6, 7, on page 308 in a manner deemed ample for all present purposes. Much help can also be had from Comment h (P. 110) on Sec. 779, Restatement of the Law of Torts which reads:

"Whether the picketing is conducted in accordance with the standards stated in Subsection (1) **is a question of fact in each**

case. The number of pickets is a factor in ascertaining this fact; but there is no rule fixing the number of pickets at a definite figure. The question is in each case whether the number of pickets plus the attendant circumstances are such that fear of physical harm rather than persuasion is the force loosed upon the persons sought to be influenced. Thus it is important to consider the kind of place picketed and the character of persons sought to be influenced, that is,
66 for example, whether the place picketed is a foundry approached only by men or a department store patronized chiefly by women. It is important also to consider the character of the pickets, whether they are, for example, shy women or rough men. And it is important to consider the conduct of the pickets: whether they behave in a quiet, orderly manner or are boisterous and equipped with weapons of physical harm; whether they obstruct access to the place picketed so as to make ingress or egress difficult or do not interfere with it at all. Other factors may also be important, as, for example, **the presence or absence of private guards or public police** and the extent of protection afforded by them. In some circumstances, then, picketing may be a form of peaceful persuasion though the number of pickets is large; in others, the picketing may not be pair persuasion though the number is small."

Each case must turn on its own circumstances. In the cases at bar, the Board was justified in concluding that the violent methods, assaults or disturbances which were pursued or which ensued from the outset and from time to time there-

after were ample to characterize the whole campaign or to warrant a reasonable inference that the attitude of the picketers was continuously threatening, or that threatening conduct would be resorted to should conditions be favorable for the purpose. In this connection, constant presence of officers of the law and the nature of conduct employed were sufficient to warrant the Board's findings and conclusions (Am. Steel Foundries vs. Tri-City C. T. Council 66 L. ed. 189; 196-199).

The respondent Board after finding that on November 2nd, 1939, in the afternoon, the employes of the Plankinton House Company at both the Plankinton House and the Kilbourn Hotel,
67 went on strike and that prior to calling such strike they did not vote by secret ballot to call a strike, and that immediately thereafter picketing was engaged in at the three entrances to the Plankinton House, also made the following findings of fact, which the writer is convinced are supported by credible and competent evidence in the record, namely:

> "17. Phil L. Valley is business manager of Hotel and Restaurant Employees International Alliance, Local No. 122, and as such business manager, notified Marquette University and the Milwaukee School of Engineering, directing that all students working at the Plankinton House for their meals be ordered to immediately discontinue such work, and that unless such students did discontinue work at the Plankinton House, that the union would be forced to stop the employment of university students working at

other hotels and restaurants in the City of Milwaukee which had collective bargaining contracts with Local No. 122.

"18. That ever since the strike, the Plankinton House and the Kilbourn Hotel have continued to operate with the new employes replacing the striking employes.

"19. On November 4, 1939, union pickets, by means of force, prevented delivery to the Plankinton House of floral decorations by one Joseph Mueller, an employe of August F. Kellner Company. That as a result of the altercation at said time, Jack Heisdorf, Vice-President of Local No. 122, Hotel and Restaurant Employees International Alliance, and Charles McLaughlin, assistant to the secretary of Local No. 122, were arrested, and on November 17, 1939, convicted of assault and battery, McLaughlin being fined ten dollars and costs, and Heisdorf being fined five dollars and costs, the sentence against Heisdorf being suspended and he was placed on probation for thirty days. That Local No. 122 provided counsel and bail for both Heisdorf and McLaughlin, and paid McLaughlin's fine.

68 "20. Charles McLaughlin returned to the picket line immediately after his arrest, and on November 17, 1939, assaulted one Lester Raasch an employe of the Plankinton House, was again arrested, convicted and fined twenty-five dollars and costs, and the union again provided him with counsel and paid such fine.

"21. On November 4, 1939, two salesmen representing the Automotive Electrical Association, who were attempting to deliver dis-

plays and samples to the Plankinton House, were, my means of force, prohibited from making the delivery by Phil L. Valley and a number of pickets.

"22. On November 10, 1939, Jack Heisdorf, Charles Alden, striking employe of the Plankinton House, and other pickets, by the use of force prevented delivery of ice cubes to the Plankinton House, and in the course of the attempted delivery, Charles Alden assaulted Robert Jeske, then an employe of the Plankinton House.

"23. On November 17, 1939, Paul Ziebell, an employe of the Plankinton House, was assaulted by James O'Brien, a picket employed by the union, and stationed on the picket line at the Plankinton House. O'Brien was arrested, convicted and fined five dollars and costs.

"24. On November 14, 1939, Edward Knopf, an employe of the Plankinton House, was assaulted by John Thomas O'Maher, a picket stationed by the union at the Plankinton House, and a striking employe of the Plankinton House.

"25. On November 17, 1939, Rudolph Stano, an employe of the Plankinton House, was assaulted by Joseph Hofich, a picket stationed at the Plankinton House by the union, and Hofich was arrested, convicted, and fined five dollars and costs.

"26. On November 17, 1939, Thomas James, an employe of the Plankinton House, was assaulted by Larry McAllen, a picket stationed at the Hotel by the union, and fined five dollars and costs. (After due conviction.)

"27. Throughout the strike, the City of

Milwaukee caused to be stationed at the Plankinton House throughout the twenty-four hours of each day, six police officers for the purpose of maintaining order."

69 A full recital, with accurate references to the record, of almost daily conduct and occurrences extending from November 4th to November 18th, and thereafter to about November 27th, 1939, which must be considered ample to support the Board's conclusions as to a purpose to coerce, intimidate and injure, will be found on pages from 8 to 13 of the brief submitted by counsel for the Plankinton House Company. Repetition thereof at this time will not be necessary. The Captain of Police in charge of the force of men maintained on the ground, who has had much experience in maintaining peace and order, when pressed by counsel for the employees to minimize the acts of violence and disorder, very temperately answered: "I wouldn't say small, that depends on circumstances. It is a hard thing for me to answer that as to the amount——" (He was interrupted by counsel at this point: Rec. 448.)

The evidence also supports the Board's conclusion relative to the authorization and ratification of said acts (pp. 14-13 of the same brief). What was said by the court in the Whitney case upon the partial record then before it does not call for the setting aside of the Board's conclusions now before the court for review. The difference in its functions as the trial court on the one hand, with known judicial discretion, and as an appel-

late tribunal, on the other hand, dealing with findings of the Board given a definite status by law, has heretofore been explained.

In the Hotel Wisconsin controversy submitted upon the complaint of its owner, the Board made the following findings of fact:

"12. On November first, 1939, at 4:50 P. M., the employes of the Hotel Wisconsin went on strike. Prior to calling such strike, the employes of the Hotel Wisconsin did not vote by secret ballot to call it. Immediately after the strike, and continuing down to the time of the hearing before this Board, picketing was engaged in by members of all the respondent unions at the entrances to the Hotel Wisconsin.

"13. All of the employes of the Hotel Wisconsin, exclusive of executives and supervisory employes, went out on strike, and since that time the Hotel has continued to operate with new employes replacing the striking employes.

"14. During the course of the strike, the unions have persuaded guests of the Hotel Wisconsin to leave the Hotel, have persuaded prospective guests to refrain from patronizing the Hotel, and have persuaded groups to cancel engagements for luncheons and parties at the Hotel.

"15. Throughout the strike, the City of Milwaukee caused to be stationed at the Hotel Wisconsin throughout the twenty-four hours of each day, police officers for the purpose of maintaining order."

Supporting facts and circumstances disclosed

by the record are fairly set forth on pages from 6 to 8 of the brief submitted on behalf of The Milwaukee Hotel Wisconsin Company and will not be repeated.

The power and functions of the Board as a trier of fact in passing upon the evidence and all conflicting inferences to be drawn therefrom and the force and effect of the Board's findings when brought up for review under the National Labor Relations Act are also passed upon and thoroughly explained in National Labor R. Board
71 vs. Pennsylvania Greyhound Lines, 82 L. ed. 831, at 837; National Labor R. Board vs. Waterman Steamship Corp., 84 L. ed. 448, at 450; Wisconsin Labor R. Board vs. Fred Rueping L. Co., supra.

Termination of 1938 Contract.

The Board's first Conclusion of Law in each case is to the effect that the contractual relationship existing between the employers and the respondent unions was terminated by said unions on November 2nd. (1st.) 1939 by the refusal of said unions to accept the award of the board of arbitration and their acts of calling strikes at the hotels in question.

The actual intention of the parties with respect spect of this branch of the case appears convincingly from the facts set forth in the Board's findings, which in turn are adequately supported by the record. The briefs also cover the subject accurately. The citations of legal authorities are in point and fully support the conclusions. (Plank-

inton Brief, pp. 23 to 30; Hotel Wisconsin Brief, pp. 2 to 6; 11 to 17.)

It is unnecessary to hold that counsel for the principal unions actually submitted to arbitration matters relating to contract renewal affecting those organizations as to which no serious conflicts had arisen. Suffice it to say that each of the petitioners at all times was, and now is, vitally interested in the controversy of the other and that they all considered themselves parties to a common cause. All having the same employer, the attainment of their objectives required cooperation and that each would assist the others.

72 The 1938 contract contained only one arbitration clause designated as Article III. It was entered into by the parties with the aid of counsel. It should be liberally construed to effectuate its beneficent purposes which in Wisconsin labor acts have been stressed as the "diminishment of the causes of labor disputes," "negotiation of terms and conditions of labor to result from voluntary agreement between employer and employee," the maintenance of "industrial peace" and "of fair, friendly and mutually satisfactory employment relations." This article included this sentence, "The arbitration award shall be final and binding upon both parties." To limit this provision as now sought would do violence to the letter and spirit of the same. In the arbitration award of October 30, 1939 there was incorporated the agreement that the arbitrators decided should be in effect from June 16, 1939 to June 15, 1940. All of the demands urged by counsel for the unions were incorporated therein, but there was

added a provision that a closed shop was to be effective only on the condition that the employees of the respective hotels by a vote by secret ballot conducted under the supervision of the Board voted in favor of a closed shop by a 75 per cent majority. This provision was in conformity to sub-division (c) of Sec. 111.06 (1) Stats. which by the following proviso sought to obviate an unfair labor practice by the employer:

> "* * * provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of
73 his employes in a collective bargaining unit, where three-quarters or more of the employes in such collective bargaining unit shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board."

The obvious purpose of this statute would be served by imputing its provisions to the contract whether written therein or not (Stone vs. Inter-State Exchange, 200 Wis. 585, 589; Baumann vs. West Allis, 187 Wis. 506, 525). In any event, the Board was justified in concluding that the arbitrators were right in clarifying the contract by a fair provision in harmony with the law. In a spirit of entire fairness, the inclusion of this proviso did not warrant the calling of a strike with its damaging concomitants described in the Board's findings. In weighing circumstances indicating attitude toward the law, the Board also had the right to give consideration to the following portion of Exhibit No. 7, the letter of July 11, 1939,

"We regret to note that the tenor of such revisions evinces an anti-labor attitude on the part of your respective clients, **and we can only say that in all probability this is a natural consequence of the recent anti-labor laws passed by the Wisconsin Legislature**"

as well as the concluding paragraphs of the same letter (written at a comparatively early stage of free negotiation) implying a plain threat to injure unless the writers' demands are met within three days, namely:

"We are also enclosing a proposed letter which we intend to send the convention committee of the National Letter Carriers' Association unless a contract is executed by Saturday, July 15, 1939.

74 "We hope that after due consideration your clients **will think better of their position,** and will enter into a contract with the unions, and not make necessary arbitration **or the sending of the letter to the convention committee of the Letter Carriers' Association.**"

(Emphasis that of the writer.)

This threat to injure becomes doubly plain when the following paragraphs of the "Sample copy of letter to be sent out July 15" to the Convention Committee of the National Association of Letter Carriers (part of exhibit 7) are read:

"We ask that you inform all your locals throughout the country to advise their delegates to **refrain from making reservations** at such hotels; also, **if they have made reservations, to cancel the same.** * * *"

"We know that your delegates **would not**

> **like to go through a picket line** or stay at a hotel that is strike bound, aside from **the fact that services will be crippled and curtailed.**"

It is manifest that a disinterested reader of the above quoted statements will readily agree with the Board that they evince a plain threat of combination and concert of action directed at the injury of the employer and to coerce submission.

It is the view of the writer that the calling of the strike in this case was utterly inconsistent with a continuance of genuine contract relations between an employer and his employees with due regard to the mutuality of interest that should in a sincere sense accompany that relation. It convincingly shows a termination or repudiation of the contract and any reciprocal duties thereunder. The same conclusion would have followed a lockout by the employer. The views expressed by our Supreme Court in David Adler & Sons Co. vs.
75 Maglio, 200 Wis. 153, relative to lockouts demonstrates the correctness of that view.

Notwithstanding the contract reservation to the respective parties of "the right to strike or lockout" in the event of failure to effect a meeting of the minds, the conclusion is irresistible from all that has been said that the petitioners are in no position to invoke section 111.16 Stats. which provides:

> "Existing Contracts Unaffected. Nothing in this chapter shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on the effective date hereof."

Has the National Labor Relations Board Exclusive Jurisdiction?

The above question is no longer an open one in this state or in this court. It was fully considered and decided in Wisconsin Labor R. Board vs. Fred Rueping L. Co. 228 Wis. 473, at 478 et seq.

This court in Whitney vs. Local No. 122, etc. (Case No. 169-311; pages 14 to 16 of the opinion) held the Wisconsin Employment Relations Board had jurisdiction in the instant proceedings. The factual showing then before the court does not materially differ from that presented here, hence there is no occasion for any change or modification of the conclusion there announced upon this branch of the litigation. (National Labor Relations Board vs. Fainblatt, 83 L. ed. 1014 and the array of cases cited in the opinion in that case; see also annotations in: 83 Law Ed. pp. 692 to 699; 112 A. L. R. 959 to 960; 115 A. L. R. 314 to 315; 117 A. L. R. 414 to 415; 123 A. L. R. 612 to 618). Congress has not pre-empted the field. The federal Act has not superseded either the 1937 or 1939 Wisconsin Acts.

76 Since the filing of the opinion in the Whitney case, supra, the Supreme Court of the United States on February 26, 1940, handed down its decision in Amalgamated Utility Workers vs. Consolidated Edison Company of New York 84 L. ed. 493 holding (Syl. 4):

> "The National Labor Relations Board is a public agency created to enforce the provisions of the National Labor Relations Act, and

> "not a tribunal for the enforcement of private rights by means of administrative remedies."

and that the private party on whose complaint proceedings were originally instituted by the Board is without any standing to apply to the courts for adjudications of contempt in disobeying any decree enforcing the Board's order. The Board alone is authorized to take proceedings to enforce its orders. That decision when fully considered emphasizes a vital difference between the Federal Act and the Wisconsin "Employment Peace Act." The standing and rights of interested parties other than the Board are plainly recognized and defined in the Wisconsin Act.

We again point to the fact that the National Labor Relations Act and the corrective measures there provided define and relate only to unfair labor practices by **employers.** (Sec. 158, Chapter 7, Title 29, Supplement IV, Code of Laws of U. S.) The Wisconsin Act (Chapter 111, Stats. 1939) on the other hand, defines and deals with unfair labor practices on the part of both employers **and employees.** (Sections 111.06, 111.07.) Only charges against **employees** and their unions or representatives are involved in the cases at bar.

77 This subject is fully treated on pages from 51 to 76 of the brief submitted by the Attorney General and on pages from 44 to 49 of the brief of the Plankinton House Company. The arguments there presented are convincing and need not be reiterated here.

Constitutionality of the Wisconsin "Employment Peace Act."

Some of the grounds of attack upon the validity of the present "Employment Peace Act", (such as the claim of fatal indefiniteness of terms and of invasion of the rights of minorities by the majority vote of employes), suggest the propriety of the following comparison and reference to terms now characterized as so indefinite, in declarations of public policy in the former (1937) and the present (1939) Wisconsin Acts:

The 1937 Act was called the "Wisconsin Labor Relations Act" and created Chapter 111 of the statutes

> "* * * relating to the promotion of equality of bargaining power between employers and employes, the diminishment of the causes of labor disputes, the creation of a labor relations board for the state of Wisconsin * * *"

and stated (Sec. 111.01) that it was enacted in furtherance of the public policy as to collective bargaining declared in Section 103.51, Stats. which had been passed in 1931 as one of thirteen new sections of the statutes described in their title as

> "* * * relating to litigation growing out of labor disputes and limiting the jurisdiction of courts sitting in equity"

78 and embodying a declaration of public policy which in part reads as follows:

> "* * * Negotiation of terms and conditions

> of labor should result from voluntary agreement between employer and employee. * * * it is necessary that the individual worker have full freedom of **association, self-organization**, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be **free from the interference, restraint or coercion** of employers of labor, or their agents, in the **designation of such representatives or in self-organization** or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

(Note terms now challenged as indefinite and that voting by employees, after the manner of stockholders in corporations or the members of various associations, would be required to make association, self-organization and concerted activities feasible.)

Doubtless acting by virtue of the power of the state of Wisconsin, based upon the police power, to subject labor relations to regulation (Wis. Labor R. Board vs. Fred Rueping L. Co., 228 Wis. 473, 479-482), the legislature of this State enacted its said 1937 Labor Relations Act and therein prescribed definitions of terms used, created a Labor Relations Board with stated powers, prescribed what shall comprise unfair labor practices "for an employer" and provided for the prevention of the same, and also made ample provision, among other things, for the designation or selection "**by the majority** of the **employes in a unit appropriate for such purposes**" of representatives

who "shall be the exclusive representatives of **all the employes in such unit** for the purposes of collective bargaining." This Act was upheld and its efficacy assured by the decision of our Supreme Court in the Rueping case, supra, as a valid companion measure to the National Labor Relations Act in no wise superseded by the latter (pp. 482-491 of opinion).

Again acting under the State's police power, the legislature of the State in its 1939 session, by the enactment of the present "Employment Peace Act" and, by Section 111.01, in part declared the public policy of the state as to employment relations and collective bargaining to be as follows:

> "(1) It recognizes that there are three major interests involved, namely: That of the **public**, the **employe** and the **employer.** These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote **each of these interests** with due regard to the situation and to the rights of the others.
>
> "(2) Industrial peace, regular and adequate income for the employe, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employment relations and the **availability of suitable machinery for the peaceful adjustment of whatever controversies may arise.** * * *
>
> "It is also recognized that whatever may be the rights of disputants with respect to

each other * * * they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights of third parties to earn a livelihood, transact business and engage in the ordinary affairs of life by any lawful means and free from **molestation, interference, restraint or coercion.**

80 "(3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employe. For the purpose of such negotiation an employe has the right, if he desires, **to associate with others** in organizing and bargaining collectively through representatives of his own choosing, **without intimidation or coercion from any source.**

"(4) It is the policy of this state, in order to preserve and promote the interests of **the public, the employe, and the employer alike,** to establish standards of fair conduct in employment relations **and to provide a convenient, expeditious and impartial tribunal** by which these interests may have their respective rights and obligations **adjudicated.**

While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat."

Like its predecessor, the 1939 Act prescribes definitions of terms used, creates an Employment Relations Board with stated personnel and powers, prescribes what shall comprise unfair labor practices for employers and employes alike individually or in concert with others, and makes comprehensive and thorough provisions for the prevention of same. It also explicitly declares

the rights of employes of self-organization and their right to form, join or assist labor organizations to bargain collectively through representatives of their own choosing **"by a majority of the employes voting in a collective bargaining unit"** and various other matters.

It is obvious from these declarations and enactments extending through the last decade that
81 employes, employers and the public, impelled by a vivid appreciation of the exigencies and the social and economic damage incidental to the problem, acting through their chosen representatives, have earnestly sought, and have adopted just and effective measures to regulate and stabilize labor relations and the disputes and litigation growing out of the same, and to that end have established administrative tribunals vested with the power to conduct elections, mediate, arbitrate, hear and determine controversies concerning unfair labor practices, and, finally, to make conclusive findings and orders subject only to limited judicial review. Some of the limitations upon the power of the courts have already been discussed. The following sub-sections of Sec. 111.07, Stats. prescribe others:

> "(9). In any proceedings for review of an order of the board the court shall disregard any irregularity or error unless it be made to appear affirmatively that the complaining party was prejudiced thereby." * * *
>
> "(12). A substantial compliance with the procedure of this chapter shall be sufficient to give effect to the orders of the board, and

they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto."

In commendable harmony with the aims and spirit of the **three major** interests (aptly denominated such by the legislature), counsel for the petitioners (pp. 175 and 162 of their brief) make the following statements and concessions:

"(a) At the outset, the unions desire the court to know that they did not condone nor desire violence and disorders; that the position of the union is that labor controversies do not require violence, but that on the contrary, labor's cause is injured by violence." * * *

"(b) In this community it is well recognized that the labor movement is counseled and headed by responsible labor leaders. They have preached and encouraged peaceful picketing in the firm belief that the decent
82 and fair element of the community, which is by far the type of citizenry in this locality, will sympathize and respect labor's cause most if it is conducted peacefully and without violence." * * *.

"(c) We can readily think of other laws, provisions or orders of the court which might be deemed regulatory rather than prohibitory. A law or an order limiting the number of pickets within certain areas might be regulatory rather than prohibitory. Likewise, a provision similar to that found in Section 111.06 (2) (f) for the purpose of prohibiting blocking of entrances or free and uninterrupted use of public roads would be regulatory rather than prohibitory."

The exercise of the rights of free speech and liberty of action are not absolute (John F. Jelke Co. v. Beck, 208 Wis. 650, 666-7) and they may be regulated under the police power, but not suppressed under the guise of regulation. After careful study of the Act now before the court and of the conclusions and order of the Wisconsin Employment Relations Board in the cases at bar, the court is convinced that the legislature has made an earnest and sincere effort to regulate rather than to prohibit. This conclusion is reached with due recognition of the correctness of the following statement made in the sound and well-reasoned opinion of the Supreme Court of Nevada in City of Reno vs. Second Judicial Circuit, 95 Pac. Rep. (2d Ser.) 994, at 998:

> "'Organized labor has the rights of free speech, peaceful picketing and collective bargaining.'
>
> "The judicial notion, sometimes expressed, that there can be no such thing as peaceful picketing, is subscribed to by few courts, and repudiated by many. 'The doctrine,' said the court in George B. Wallace Co. v. International Ass'n of Mechanics, 155 Or. 652, 63 P. 2d 1090, 1095, 'that picketing is necessarily a species of coercion and intimidation is dogma long since discarded.' Goldfinger v. Feintuch, 159 Misc. 806, 288 N. Y. S. 855."

83 but also heeding the following equally sound and authoritative doctrine restated in the same case, as follows (P. 1000):

> "(3) While the net result of better reasoned judicial opinion is to that effect, it is

> universally held that if picketing goes beyond the allowable area of peaceful persuasion and assumes the form of intimidation, threats of violence, or impedes traffic, or interferes with the free use of property, or involves trespass or fraud, it is unlawful."

Mere reference to the comprehensive review of decided cases found in the opinion in City of Reno vs. Second Judicial Circuit, supra, obviates any citation of the same cases in this memorandum.

Chapter 38 of the Restatement of the Law of Torts entitled "Labor Disputes" deals with many phases of this subject and has afforded much help to the writer in his study. The same may be said of Annotations in 108 A. L. R. 1119, and 122 A. L. R. 1043, as well as prior annotations supplemented thereby. In connection with Schuster vs. Int. Ass'n of Machinsts (Ill. App.), 12 N. E. (2d Ser.), 50, 57, the following cases should also be considered: Swing vs. Am. Fed. of Labor (Ill. Sup. Court), 22 N. E. (2d Ser.), 857; Swing vs. Am. Fed. of Labor (Ill. App.), 18 N. E. (2d Ser.) 258; Local Union No. 26 etc. vs. City of Kokomo (Ind.), 5 N. E. (2d) 624, 108 A. L. R. 1111.

In harmony with the better reasoned judicial opinion set forth in the above quotation the legislature of this state enacted its definitions of unfair labor practices "for an employe individually or in concert with others" [Sec. 111.06 (2), Stats.] by giving cognizance to coercion, intimidation or a purpose to injure [subd. (a), (b), (f), (g)], to contract breaking [subd. (c)], to re-

84 fusal or failure to comply with, or obey, the final determination of tribunals vested with jurisdiction [subd. (d)], to the promotion or inducing of picketing or boycotting in disobedience to law [subd. (e)], to secondary boycott [subd. (g)], to mass picketing and interference with the use of streets and entrances [subd. (f)], to conspiracies to hinder or prevent lawful operations [subd. (g)], to take unauthorized possession of property of the employer [subd. (h)], to fail to give notice of intention to strike [subd. (i)], and the commission of crimes or disdemeanors [subd. (j)].

It does not seem necessary to present an extended argument that each and all of the foregoing acts and practices fall squarely within the state's right to legislate by virtue of its police power. The classification made is based upon substantial distinctions and existing circumstances of recognized importance and is obviously germane to the aims and purposes of the law and its well-known relation to the interests of public safety, welfare and prosperity. It has become a matter of common knowledge that the avoidance, or at least a substantial lessening, of the necessity for public relief is a legitimate objective of the state and of its citizens.

In passing, it should also be firmly noted that a similar public policy is obvious from the provisions of Section 103.53, Wis. Stats., and more directly from the following subdivisions of the first subsection and the plainly expressed restrictions made part thereof:

"(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be, **without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or** threat thereof."

"(f) Ceasing to patronize or to employ any person or persons, **but nothing herein shall be construed to legalize a secondary boycott."**

["Secondary boycott" is also defined in Sub-sec. (12) of Sec. 111.02, Stats. and made an unfair labor practice by Subd. (g) of Sec. 111.06 (2) Stats.]

"(g) Assembling **peaceably** * * * to promote **lawful interests."**

"(j) Advising, urging, or inducing **without fraud, violence, or threat thereof,** others to do the acts heretofore specified * * *."

"(1) **Peaceful** picketing or patrolling * * * shall be legal."

It must also be noted that in the absence of **peaceful means** in a strike situation, Sec. 343.683, Stats., makes it punishable for "Any person to * * * attempt to hinder or prevent" any other person from continuing in any lawful work or employment "by threats, intimidation, force or coercion of any kind." This statute, in the opinion of the writer, applies to Finding 17 in the Plankinton House case. The Board was right in treating the conduct there found as an unfair

labor practice under Subd. (j) of Sec. 111.06 (2), Stats.

"Peaceful picketing or patrolling" has been previously discussed on pages 8 and 9 of this opinion. Peaceful patrolling and advertising of a truthful character conducted in the manner found by this court in the New Hostess Ice Cream Company case (No. 170-287) (See P. 5, supra) has been quite fully discussed on pages from 5 to 7, inclusive, supra.

86. The cases of Thornhill vs. State of Alabama and Carlson vs. California (84 L. ed. 659, 668), decided on April 22nd, 1940 (P. 6 hereof), involved legislative enactment abridging the freedom of speech or of the press as secured against state invasion by the Fourteenth Amendment of the United States Constitution. Unlike the cases at bar, criminal penalties were there prescribed. An extended analysis of the opinions in those cases may well be omitted, yet it should be noted that in the **Thornhill case**, the court found the accused was not guilty of any threats, intimidation, coercion, violence, or breach of peace, for all words spoken were uttered in a peaceful and orderly manner without putting anyone in fear, and the Code Section there attacked had been applied by the State Court

> "* * * so as to prohibit a single individual from walking slowly and peacefully back and forth on the public sidewalk in front of the premises of an employer, without speaking to anyone, carrying a sign or placard on a staff above his head stating only the fact

> that the employer did not employ union men affiliated with the American Federation of Labor * * *."

The court also pointed out that there was an absence of "picketing en masse." The state's right to enact reasonable regulations is also recognized in the following concise and definite statement:

> "The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents cannot be doubted."

The exact statement last quoted will also be found in the last paragraph of the opinion in the **Carlson case**, supra. The accused, or appellant, in that case as stated in the opinion,

87 > "* * * did not threaten or intimidate or coerce anyone, did not make any loud noises at any time, and was peaceful and orderly in his demeanor. The pickets committed no acts of violence, and there was no breach of the peace."

The findings of the Board in the Plankinton House case, quoted on pages 10 and 11, supra, distinguish that case in a vital respect from the Thornhill and Carlson cases just discussed in that violence, coercion, intimidation and threats were found by the Board upon sufficient evidence. This court, upon mere review, would not be warranted in disturbing those findings. The record presents ample facts and circumstances to warrant the Board's further conclusion that the acts so found

characterized the entire campaign from its inception and its order that, for those reasons, it should be terminated.

For the same reason, and because of the entire cessation of the 1938 employment contract (pp. 15 to 18, supra), and upon the results of the election fairly conducted by the Board, its certification of the present representative of the employees of that hotel dated March 6, 1940, must also be sustained.

All of the terms used in the "Employment Peace Act" are sufficiently definite and have been judicially defined many times. These definitions have been accurately collated on pages from 33 to 43 of the brief submitted by the Plankinton House Company. The act is sufficiently definite and certain in terminology which may be said to include "well-understood concepts of the law" (Wis. Labor R. Board vs. Fred Rueping L. Co., 228 Wis. 473, at 495). As stated in that case their application to a particular case "must be left to the trier of fact if there is room for conflicting
88 inferences." In the cases at bar, the controlling facts are not in serious dispute, and the inferences drawn therefrom by the Board are fair and reasonable.

Although actual violence or breaches of the peace were not found by the Board in the Hotel Wisconsin case, the stationing of pickets at both the front and rear entrances of the hotel in the numbers disclosed by the record, the facts found in Finding 14 and the necessity of maintaining a police force at the hotel throughout the 24 hours

of each day during upwards of five months, when considered in the light of all the circumstances of the hotel controversy from its inception, must be held sufficient to support the Board's conclusions. (Century Building Co. vs. Wis. Employment Relations Board, 291 N. W., 305, 308.)

It is the duty of the court not to declare laws unconstitutional unless it clearly appears beyond reasonable doubt that they contravene constitutional safeguards. (Gibson Auto Co. vs. Finnegan, 217 Wis. 401, at 412-413; State ex rel. Atty. Gen. vs. Wis. Constructors, 222 Wis. 279, at 284, and cases cited.) With deference to that rule and for reasons hereinbefore stated as applicable to the entire Act, the court sustains as valid the provision requiring a secret ballot to call a strike and a ¾ affirmative vote for the making of an all-union agreement. Association, self-organization and concerted activities (P. 21, supra) will, in a large measure, be protected and promoted by the exercise of such rights of suffrage and expression. These provisions of the Act are reasonable as an effective regulation entirely germane to the scope and aims of the police power of the
89 state to enable groups of workers, many times numerically large, to give free and unhindered expression to their individual convictions and as to whether they consider differences with their employers of sufficient gravity to warrant the cessation of their employment with the attending hardships to themselves and their families during periods which many times become protracted as impressively brought home in the cases at bar.

The findings, conclusions, orders and certification of representatives made by the Wisconsin Employment Relations Board are in all things sustained and the attacks made thereon are overruled. Orders in conformity with this opinion may be presented for signature and filing.

Dated May 11, 1940.

Gustave G. Gehrz,
Circuit Judge.

90 **Cover.**

91–95 **JUDGMENT.**

(Venue and title omitted)

The above named petitioners' petition for a review of the final order of the Wisconsin Employment Relations Board, dated the 15th day of February, 1940, in the above entitled matter, seeking to set aside the said order of the Board
92 for the reasons therein assigned and the answer and cross-petition of the Board seeking an order confirming and enforcing the provisions of the said order referred to came on to be heard before this court without a jury, pursuant to the statutory method for review and enforcement of such an order, on the 8th and 9th days of April, 1940, Honorable Gustave G. Gehrz, Circuit Judge presiding. For purposes of hearing, the case was consolidated with the Milwaukee Hotel Wisconsin Company case, No. 170-383, which case presented similar issues, and the Plankinton House Company cases, Nos. 170-381 and 170-880, in which said cases the same petitioners sought review of a representation proceeding arising out of the same

labor dispute as is involved in this unfair labor practice case, No. 170-382.

The petitioners appeared by Padway, Goldberg & Tarrell and the respondent, Wisconsin Employment Relations Board, appeared by John E. Martin, Attorney General; James Ward Rector, Deputy Attorney General, and N. S. Boardman, Assistant Attorney General. At the commencement of the said hearing, Richardson, Robertson, Reeder & Stearns asked leave to appear as amicus curiae in this case, No. 170-382 and to file a brief for and on behalf of the Plankinton House Company; Shea & Hoyt asked leave to appear and file a brief amicus curiae for and on behalf of the Milwaukee Hotel Wisconsin Company in case No. 170-383; George E. Burns asked leave to appear amicus curiae and file a brief in the Plankinton House representation cases, Nos. 170-381 and 170-880; David Beznor asked leave to appear amicus curiae in the cases and file a brief on behalf of Harvester Employees Industrial
93 Union, and Lines, Spooner & Quarles asked leave to appear amicus curiae and file a brief, if later deemed advisable. All such requests were granted without objection, in the manner and as provided in the orders, filed.

After opening statements as to the nature of the cases and the issues involved and it appearing to the court that the first three named firms might more properly appear for and on behalf of their clients as parties, said clients having been parties in the proceedings before the Board and there being no objection thereto, the Plankinton

House Company was made a party respondent in this case, No. 170-382, appearing by Richardson, Robertson, Reeder & Stearns by Mr. Herman M. Knoeller; the Milwaukee Hotel Wisconsin Company was made a party respondent in case No. 170-383, appearing by Shea & Hoyt by C. F. Mikkelson, and the independent organization of Plankinton House Employees was made a party in the representation cases, Nos. 170-381 and 170-880, appearing by Mr. George E. Burns.

All parties participated in the oral argument, briefs were filed on behalf of all parties and a separate brief was filed by David Beznor, amicus curiae for and on behalf of the Harvester Employees Industrial Union, and the court having heard the arguments of counsel and having given careful consideration to the briefs filed and having taken the matter under advisement and being fully and sufficiently advised in the premises, and the court having on the 11th day of May, 1940, rendered and filed into written decision herein wherein judgment is directed as hereinafter adjudged.

94 Now on motion of John E. Martin, Attorney General; James Ward Rector, Deputy Attorney General; N. S. Boardman, Assistant Attorney General, attorneys for the Wisconsin Employment Relations Board, and Richardson, Robertson, Reeder & Stearns, attorneys for the respondent, Plankinton House Company, a corporation, and upon all the records, files and proceedings had herein,

It Is Ordered and Adjudged that the final order

of the Wisconsin Employment Relations Board, dated February 15, 1940, and the findings and conclusions of said board in the above entitled matter be and the same hereby is in all respects sustained, confirmed and enforced.

It Is Therefore Ordered and Adjudged That: The unions, Hotel and Restaurant Employees International Alliance, Local No. 122, International Laundry Workers, Local No. 174, Bartenders International League of America, Local No. 64, International Union of Operating Engineers, Local No. 311, and the Milwaukee Building Trades Council, the officers, members, agents, successors, and assigns of each, shall:

1. Immediately cease and desist from:

(a) Engaging in, promoting or inducing picketing at or near the Plankinton House or the Kilbourn Hotel;

(b) Attempting to hinder or prevent by threats, intimidation, force, or coercion of any kind, the pursuit of lawful work by employes of the Plankinton House Company;

(c) Boycotting in any way the Plankinton House Company.

95 2. Take the following affirmative action:

(a) Post notices to their members in conspicuous places at the union headquarters that the union has ceased and desisted in the manner aforesaid, and that all officers, members and agents of the union are to refrain from engaging in promoting or inducing picketing and boycotting of the Plankinton House Company, and also to refrain from attempting

to hinder or prevent by threats, intimidation, force or coercion of any kind, the pursuit of lawful work by employes of the Plankinton House Company.

(b) Notify the Board in writing forthwith that steps have been taken by each of the unions to comply herewith.

It Is Further Ordered and Adjudged that this judgment be and become effective and enforceable as the judgment of this court as of this date and be entered accordingly.

It Is Further Ordered and Adjudged that the motion of the petitioners to vacate and set aside the said order be and the same hereby is denied.

Dated May 14th, 1940.

By the Court,
Gustave G. Gehrz,
Circuit Judge.

The above judgment is corrected and amplified to conform with the Court's written decision by inserting the words "and the findings and conclusions of said board," in the tenth line of page 4 thereof.

By the Court,
Gustave G. Gehrz,
Circuit Judge.

Dated May 14, 1940.

97–98 **Order to show cause why judgment should not be stayed.**

99–101 **Affidavits in support thereof.**

102 **Cover.**

103–109 **Affidavits in opposition to request for stay of judgment.**

110 **Cover.**

111–114 **ORDER GRANTING QUALIFIED STAY OF JUDGMENT.**

(Venne and title omitted.)

Whereas, on the 14th day of May, 1940, a judgment was duly entered in the Circuit Court of Milwaukee County in the above entitled action denying the motion of the petitioners to vacate and set aside the final order of the Wisconsin Employment Relations Board dated February 15, 1940, hereinafter mentioned, and also ordering and adjudging as follows to wit:

"It Is Ordered and Adjudged, That the final order of the Wisconsin Employment Relations Board, dated February 15, 1940, and the Findings and Conclusions of said board in the above entitled matter be and the same hereby is in all respects sustained, confirmed and enforced.

"It Is Therefore Ordered and Adjudged, That the unions, Hotel and Restaurant Employees International Alliance, Local No. 122, International

Laundry Workers, Local No. 174, Bartenders International League of America, Local No. 64, International Union of Operating Engineers, Local No. 311, and the Milwaukee Building Trades Council, the officers, members, agents, successors, and assigns of each, shall:

112 "1. Immediately cease and desist from:

(a) Engaging in promoting or inducing picketing at or near the Plankinton House or the Kilbourn Hotel;

(b) Attempting to hinder or prevent by threats, intimidation, force, or coercion of any kind, the pursuit of lawful work by employees of the Plankinton House Company;

(c) Boycotting in any way the Plankinton House Company.

"2. Take the following affirmative action:

(a) Post notices to their members in conspicuous places at the union headquarters that the union has ceased and desisted in the manner aforesaid, and that all officers, members and agents of the union are to refrain from engaging in promoting or inducing picketing and boycotting of the Plankinton House Company, and also to refrain from attempting to hinder or prevent by threats, intimidation, force or coercion of any kind, the pursuit of lawful work by employees of the Plankinton House Company.

(b) Notify the Board in writing forthwith that steps have been taken by each of the unions to comply herewith.

"It Is Further Ordered and Adjudged that this judgment be and become effective and en-

forceable as the judgment of this court as of this date and be entered accordingly.

And the said petitioners being aggrieved by said judgment intending to appeal therefrom to the Supreme Court of the State of Wisconsin, having applied to this Court for an order granting a stay of said judgment and the order made thereby and by said Wisconsin Employment Relations Board, which motion for stay duly came on before the Court and was heard on May 16, 1940, at 2 o'clock p. m., Padway, Goldberg & Tarrell, attorneys for said petitioners appearing in support of said motion, and John E. Martin, Attorney General, and N. S. Boardman, Assistant Attorney General, appearing for said Wisconsin Employment Relations Board in opposition thereto, and Richardson, Robertson, Reeder & Stearns, by Herman M. Knoeller, appearing for the Plankinton House Company in opposition thereto, and the Court being sufficiently advised in the premises.

Now, upon the affidavit of Phil L. Valley, filed May 16, 1940, upon the affidavit of Hiram O. Wood, filed on the same day, upon the findings of fact and conclusions of law of said Wisconsin Labor Relations Board, its said order made there-
113 upon, the judgment duly entered by the Court on May 14, 1940, and upon all the evidence, record and files herein, the Court being satisfied that it should at this time exercise its equitable powers and act in accordance with the equitable principles governing judicial action, and that the exigencies of this case require the determination hereinafter made,

It Is Ordered that petitioners' said motion for stay be and the same hereby is denied as to "cease and desist" orders of said Wisconsin Labor Relations Board lettered (b) and (c) and reading as follows:

> "(b) Attempting to hinder or prevent by threats, intimidation, force or coercion of any kind, the pursuit of lawful work by employees of the Plankinton House Company;
>
> "(c) Boycotting in any way the Plankinton House Company."

It Is Further Ordered that petitioners' said motion for stay be and the same hereby is denied as to "cease and desist" order of said Board lettered (a) and reading as follows:

> "(a) Engaging in, promoting or inducing picketing at or near the Plankinton House or the Kilbourn Hotel,"

provided, however, and subject only to the permissive provision and conditions following, to wit:

> (1) That pending the determination of their intended appeal and subject to any further or other orders of this court as hereinafter stated, said petitioners may between the hours of 7 and 8 o'clock a. m., 11:45 a. m. and 1:45 o'clock p. m. and 6 and 7:30 o'clock p. m. on days other than Sunday conduct fair and truthful advertising within the outer or curb side, one-third of the public streets in front of the hotel buildings of the Plankinton House or Kilbourn Hotel, but not in any adjoining alleys or passageways.
>
> (2) Such advertising shall not mention any

alleged labor dispute or controversy as existing between employees or either of said employers, or any alleged unfairness of conduct of the latter, and shall only be conducted by means of not more than two persons on each side of the hotel each carrying or displaying a truthful banner or sign and passing and repassing along the full length of the front sides of said hotels (the entire Michigan side of the Plankinton House to be deemed one front or side).

(3) The announcements upon said banners or signs shall not be added to by any oral statements or arguments and in any event without the use of any molesting, offensive or provocative language or such as may have a tendency to cause or stir up disputes or breaches of the peace.

114 (4) Such advertising shall be conducted without intimidation or coercion or any method involving fraud, misstatement of fact, violence, breach of the peace, or threat thereof and without impending, or interfering with, the free use by others of the streets or highways or of the doors, entrances or exits of said hotels, and without hindering, or interfering with the loading or unloading of any baggage, merchandise or articles of any kind at any door, entrance or platform of either of said hotels.

(5) This court reserves jurisdiction and power to terminate the foregoing provisions or conditions in the event of any noncompliance or violation thereof.

(6) Said petitioners shall furnish an undertaking to be approved by the court and to be in the sum of one thousand ($1,000) dollars

for the payment of all damages as provided in Section 274.23, Wisconsin Statutes.

(7) Said petitioners will serve and perfect their said appeal and prosecute the same with all reasonable speed and in accordance with the rules and directions of the Supreme Court of Wisconsin.

It Is Further Ordered that said motion for stay as to directions to take affirmative action (order 2 of the Board) be and the same hereby is denied except that the direction therein with respect of picketing be modified or qualified to permit said petitioners to conduct fair and truthful advertising in the manner and subject to the conditions hereinbefore set forth.

Dated May 17, 1940.

By the Court:

Gustave G. Gehrz,
Circuit Judge.

115 **Cover.**

116 **Notice of entry of order granting qualified stay of judgment.**

117–120 **Qualified stay of judgment** (R. 111 through 114, C. 52 through 57).

121 **Cover.**

122–123 **Notice of appeal.**

124 **Cover.**

RECORD OF PROCEEDINGS

Before the Wisconsin Employment Relations Board.

125 **Cover.**

126–128 **Certificate of Wisconsin Employment Relations Board.**

129– **COMPLAINT.**

138 (Venue and title omitted.)

Now comes the above-named complainant, Plankinton House Company, by Richardson, Robertson, Reeder & Stearns, its attorneys, and files its complaint in writing, charging the above-named respondents with having engaged and still being engaged in unfair labor practices within the meaning of Section 111.06 of the Wisconsin Statutes and alleges and shows to the Board as follows:

1. That complainant, Plankinton House Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and engaged in the general hotel business with its principal office at 609 North Plankinton avenue, Milwaukee, Wisconsin, and operates the "Plankinton House" and the "Kilbourn Hotel" in said city and state.

130 2. That the respondents, Hotel & Restaurant Employees International Alliance, Local No. 122, with its principal office at 734 North Third street, Milwaukee, Wisconsin; International Laundry

Workers, Local No. 174, with its principal office at 1012 North Third street, Milwaukee, Wisconsin; Bartenders International League of America, Local No. 64, sometimes known as International Bartenders & Beverage Dispensers, Local No. 64, with its principal office at 744 North Sixth street, Milwaukee, Wisconsin; International Union Operating Engineers, Local No. 311, with its principal office at 2401 West Wisconsin avenue, Milwaukee, Wisconsin; and Milwaukee Building Trades Council, with its principal office at 2218 North Third street, Milwaukee, Wisconsin, are labor unions and voluntary unincorporated associations of more than seven members, having a recognized group name, and doing business in Milwaukee, Wisconsin, by their duly authorized officers, executives, and business agents, and that the members of said labor unions are so numerous and to a large extent unknown so that it is impracticable to bring them all before the Board; that the respondents, Phil L. Valley, John Alexander and Jack Heisdorf, are made respondents herein as business agent, organizer and vice-president, respectively, of Hotel & Restaurant Employees International Alliance, Local No. 122, and as representatives of all the members of said last mentioned local union in addition to being joined individually as respondents.

3. That the total number of employees of the Plankinton House, exclusive of the general manager, H. O. Wood, and the resident manager, J. N. Hoffman, is one hundred sixty (160), of which number eighty-two (82) employees have either

returned to work or continued to work after the hereinafter illegal strike was called by the respondents, and that the number of employees not working at the present time and involved in the hereinafter alleged unfair labor practices does not exceed seventy-eight (78).

131 4. That the nature of the work usually performed by the employees involved in the hereinafter alleged unfair labor practices consists of the usual and customary hotel work incidental to and necessary for the operation of the Plankinton House, a hotel located at 609 North Plankinton avenue, Milwaukee, Wisconsin, and owned and operated by the complainant herein; more particularly, said employees were previously engaged in the discharge of their duties as bell men, elevator operators, housekeepers, launderers, barroom attendants, general maintenance men, painters, musician, waitresses, and attendants in the operation of the kitchen and coffee shop of said last mentioned hotel.

5. That on or about June 16, 1938, the complainant and the respondent unions entered into a contract covering the terms and conditions of employment of certain people employed at the Plankinton House; said unions were recognized as the exclusive bargaining agent for the employees who came within the jurisdiction of the respective unions; said contract was to be effective commencing June 16, 1938, and to continue for a period of one year ending on June 15, 1939, and to continue for subsequent consecutive one-year renewals thereof unless either party thereto

served notice in writing on the other party at least thirty days before the expiration of such year that such party desired to terminate the contract at the end of such current year; it was further provided in said contract that either party thereto may serve notice in writing upon the other party within thirty days of the termination of such contract year that it desired that such contract continue for an additional year and that such party desired to negotiate hours, wages, and working conditions for the following contract year and that when such notice was sent and the other party had not sent any cancellation notice, the contract should continue in force, and the terms agreed upon by subsequent negotiations should be retroactive from the date of the commencement of any such year, and that in the
132 event the parties could not reach an agreement through negotiations on or before thirty days after the termination of the preceding contract year, the differences should be submitted to arbitration; on May 15, 1939, the respondent unions, through their attorneys, gave notice to the complainant that they desired to negotiate changes in the existing contract for the coming year, and the complainant likewise served notice of proposed changes in said contract; thereafter the parties to said contract entered into negotiations for the purpose of agreeing upon the proposed changes to such contract until July 11, 1939, when the respondent unions, through their attorneys, notified the complainant in writing that it appeared impossible for the parties to agree upon

terms by negotiation and demanded arbitration and at the same time designated the respondent, Phil L. Valley, and Attorney I. E. Goldberg as their representatives on the arbitration board. On or about July 15, 1939, the complainant, together with other hotels involved in negotiation with the respondent unions, appointed two representatives for said arbitration board, and thereafter Alfred H. Handrich was appointed by the Wisconsin Employment Relations Board as the fifth and impartial arbitrator; the arbitration board thus composed to hear and determine the terms of a new labor contract to be executed by the parties convened from time to time, and the complainant with its attorneys and the respondents with their attorneys appeared before said arbitration board and fully presented and argued the demands and proposed revisions in the new labor contract to be executed by the parties. After hearing and duly considering all the evidence presented and arguments made, the said board of arbitration on October 30, 1939, rendered its award, providing, among other things, that if the respondent unions desire an all-union agreement, all employees covered by the labor contract and subject to the jurisdiction of the unions should be and remain members in good standing in their respective unions in order to retain employment provided that three-fourths or more of the employees in each proper collec-
133 tive bargaining unit shall have voted affirmatively by secret ballot in favor of an all-union agreement in a referendum conducted by the Wiscon-

sin Employment Relations Board. Upon the receipt of a copy of the award on November 1, 1939, your complainant through its attorneys notified in writing the attorneys representing the respondent unions that it agreed to the arbitration award and upon the acceptance of the award by the respondent unions it would execute a contract in accordance with the terms of the decision of said board of arbitration. The respondent unions failed, neglected, and refused to accept the award and did call an illegal strike and walk-out on November 2, 1939, when the Wisconsin Education Association held a convention in the City of Milwaukee and most of the hotels of the City of Milwaukee, including the Plankinton House, were filled with Wisconsin school-teachers as guests, thereby seriously interfering with hotel service, and since said time the said respondents have engaged and are engaging at the present time in the hereinafter mentioned unfair labor practices within the meaning of Section 111.06 of Chapter 57 of the 1939 Laws of Wisconsin, commonly known as the Wisconsin Employment Peace Act.

6. That the overt acts in carrying out said illegal acts and walk-out and the unfair labor practices engaged in by the respondents in violation of the above-mentioned Wisconsin Employment Peace Act were many and varied, but among the numerous instances thereof your complainant specifies the following:

(a) That ever since November 2, 1939, the respondent labor unions and certain of their members, at the direction and instigation of the re-

spondents, Phil L. Valley, John Alexander and Jack Heisdorf, co-operated in engaging in, promoting or inducing picketing, boycotting and other overt concomitants of a strike without having a majority of the employees of the complainant in the collective bargaining unit vote by secret ballot to call a strike in violation of Section 111.06 (2) (e) of the Wisconsin Statutes.

134. (b) That at numerous times since November 2, 1939, the respondents have materially hindered and prevented by mass picketing threats, intimidation, force and coercion of various kinds the pursuit of lawful work and employment and obstructed and interfered with the entrance to and the egress from the Plankinton House and obstructed and interfered with the free and uninterrupted use of the streets and highways in and around the Plankinton House, in violation of Section 111.06 (2) (f) of the Wisconsin Statutes, to wit: On November 4, 1939, an employee, William Komes, of the complainant attempted to open the sky room door of the Plankinton House for the purpose of letting a delivery man employed by August F. Kellner Company, florists, Milwaukee, Wisconsin, carry in floral decorations loaned to the Wisconsin-Upper Michigan Florists Association, which was holding a convention in said sky room, when the respondents, under the leadership of Jack Heisdorf, vice-president of Local Union No. 122 mentioned above, rushed to the sky room door entrance, forcefully shoved the door back into the face of the complainant's em-

ployee, and attacked the delivery man carrying the floral decorations, which were then and there seized, thrown to the sidewalk, trampled upon, damaged and destroyed by the respondents and certain of their members acting as pickets and all further attempts to make delivery were prevented until the police arrived, opened the picket line, and arrested certain members of the respondent labor unions, including Jack Heisdorf.

(c) That ever since November 2, 1939, the respondent labor unions and certain of their members, especially the officers of Local Union No. 122 heretofore mentioned, have engaged in a secondary boycott and hindered or prevented, by threats, intimidation, force and coercion, the obtaining, use and disposition of materials, equipment and services, and continue to so prevent persons from making deliveries to or from said hotel; all in violation
135 of Section 111.06 (2) (g) of the Wisconsin Statutes, to wit: On November 4, 1939, the Automotive Electric Association was holding a convention in Milwaukee and two of its salesmen drove up to the delivery door of the Plankinton House for the purpose of unloading displays and samples carried in their automobile, when the respondents, Phil L. Valley and Jack Heisdorf, together with a large number of members belonging to the respondent unions, stepped between said salesmen and the employees of your complainant who sought to assist said salesmen and prevented any delivery; said respondent, Phil L. Valley, assaulted and battered Harvey Weber, an employee of your complainant, and said respondent, Jack

Heisdorf, used threats and intimidation toward him; also, on November 5, 1939, the complainant sought to make a delivery of clean wash by automobile from the Plankinton House to the Kilbourn Hotel, but just as soon as the delivery door of the Plankinton House was open the two pickets parading in front thereof gave a signal to a large number of men standing across the street, who then formed a flying squadron and in mass formation paraded so menacingly and closely to the delivery door that it was impossible to carry out and load the wash for delivery.

(d) That on November 10, 1939, the respondent labor unions and certain of their members, especially the respondent, Jack Heisdorf, and one Charles Alden, did, by the use of threats, intimidation, force and violence, take unauthorized possession of four large cans of cube ice which was being delivered to the Plankinton House and did then and there dump the cube ice in the public street, damaging and destroying the same beyond use, and at the same time assaulted and battered several employees of your complainant, especially Robert Jeské, who attempted to deliver said ice to the hotel, all in violation of Section 111.06 (2) (g) and Section 111.06 (2) (h) of the Wisconsin Statutes.

(e) That said respondent labor unions and certain of their members have coerced and intimi-
136 dated and are now engaged in the coercion and intimidation of various employees of the complainant in the enjoyment of their legal rights guaran-

teed in Section 111.04 of the Wisconsin Statutes, and particularly in their legal rights to work, as well as security in their person and property, and with the full knowledge of the respondents several of their members have committed various misdemeanors during the course of and in connection with the conduct of said illegal strike, all in violation of Section 111.06 (2) (a) and Section 111.06 (2) (j) of the Wisconsin Statutes, to wit: On November 7, 1939, at 10 o'clock a. m., while Paul Ziebell was standing within the doors of the Plankinton House with two sample cases of a guest, one of the pickets, James O'Brien, alias Pat O'Brien, employed by the respondent unions and carrying a picket sign, left the picket line and entered the hotel and did then and there violently assault and batter said Paul Ziebell and also tore the uniform worn by Lester Raasch, also an employee, as a result of which said James O'Brien was arrested; that said James O'Brien had been guilty of previous illegal conduct several days prior thereto because of the use of abusive language and spitting upon employees of the hotel and had been so warned by the police, and upon information and belief the said James O'Brien is a prizefighter residing in Chicago, Illinois, and had been ordered two weeks before the aforesaid fracas by the Judge of the Milwaukee District Court to leave town after serving ten days in the House of Correction in lieu of a $25 fine imposed for disorderly conduct; also, on November 11, 1939, Fred Langdon, a valet employed by your complainant, was, upon information and

belief, interrogated, assaulted and battered by members, agents or employees of the respondents while he was enjoying a glass or beer at a tavern; on November 9, 1939, Elmer Hundt, an employee of the complainant, was called a vile and indecent name on the public street directly in front of the Plankinton House by a union man and picket who was conversing with a union overseer of the picket
137 line, and said Elmer Hundt was threatened and intimidated by said overseer; on November 4, 1939, Peggy Hehmeyer, an employee of the complainant, and on November 5, 1939, and November 6, 1939, James Myrick, also an employee of the complainant, were called vile and indecent names and threatened and intimidated in the enjoyment of their legal rights guaranteed by Section 111.04 of the Wisconsin Statutes by the respondents and certain members of their unions.

(f) That ever since November 2, 1939, the respondent unions and certain of their members have coerced and intimidated and now are engaged in the coercion and intimidation of various employees of the complainant in the enjoyment of their legal rights guaranteed under Section 111.04 of the Wisconsin Statutes, and particularly in their legal rights to work, as well as security in their person and property, but that said violations are so numerous and constant that they cannot be stated in this complaint without unduly extending the same beyond a clear and concise statement, and the complainant reserves the right to introduce evidence thereon and on all subsequent unfair labor practices committed be-

tween the time of the filing of this complaint and a hearing before the Board.

Wherefore, your complainant prays that it may have relief under and pursuant to Chapter 111 of the Wisconsin Statutes, to wit:

(a) That a hearing be had on this complaint at an early date.

(b) That the complainant have such relief as is directed and warranted under Chapter 111 of the Wisconsin Statutes including, specifically, the entry of proper orders:

(1) To protect the rights of the complainant to operate its business and especially the Plankinton House and the Kilbourn Hotel under conditions of law and order and free from all mass picketing, threats, intimidation, force, and coercion; and

138 (2) To protect the rights of such of its employees who desire to work; and

(3) To prevent the respondents and their members in the conduct of the strike from intruding into the primary rights of complainant's employees to earn a livelihood and from intruding directly into the primary rights of the complainant to lawfully transact its business and from intruding directly into the primary rights of both the complainant and its employees to engage in the ordinary affairs of life by any lawful means, free from molestation, mass picketing, threats, intimidation, interference, restraint, force, violence or coercion; and

(4) To eliminate from this strike the conditions caused by the respondents, which amount to the

primitive methods of trial by combat, which are directly declared to be contrary to the public policy of the State of Wisconsin by section 111.01 (4).

(c) That the Board ascertain and determine which of the members of the respondent labor unions have committed, or have been parties to, any unfair labor practices and to declare that such persons are no longer employees of the complainant, as defined by Section 111.02 (3) (b) of the Wisconsin Statutes.

(d) That the Board make such further findings and such further orders as the complainant may be entitled to under the statutes of the State of Wisconsin in such case made and provided.

139 **Verification.**

140 **Cover.**

141–142 **Notice of hearing.**

143–152 **ANSWER**

(Venue and title omitted.)

143 Now come the above-named respondents, by their attorneys, Padway, Goldberg & Tarrell, and by way of answer to the complaint filed by the above named complainant in the above-entitled matter, admit, deny and allege as follows:

I.

The respondents deny that they have engaged in and that they still are engaging in unfair labor

practices within the meaning of Section 111.06 of the Wisconsin Statutes, as charged by the complaint above named.

II.

144 Answering paragraph numbered 1 of said complaint respondents, upon information and belief, believe that the name of the company, its principal office, and the general nature of its business are as stated in said paragraph.

III.

Respondents allege that the names and addresses as set forth in paragraph numbered 2, are substantially correct.

IV.

Answering paragraph numbered 3 of said complaint respondents allege that the facts as to the total number of employees of the complainant, as to the total number who returned to work or didn't go out on strike, are peculiarly within the knowledge of complainant, and respondents, therefore, have not the means to correctly allege the number so involved, and, therefore, denies the same and put complainant to its proof concerning the same.

Further answering said paragraph, upon information and belief respondents deny that the total number of employees is as stated in said paragraph; deny that the total number who have either returned to work or continued to work after the strike was called are in the numbers

stated; and deny that the number of employees not working at the time the complaint was filed and involved in the strike does not exceed 78, and in regard thereto puts complainant to its proof concerning the same.

Further answering said paragraph respondents deny that the strike is illegal or was called illegally.

V.

145 Answering paragraph numbered 4 of said complaint respondents deny that the employees referred to in said paragraph are engaged in unfair labor practices.

IV.

Answering paragraph numbered 5 of said complaint respondents admit that on or about June 16, 1938, the complainant and the respondent unions entered into a contract covering the terms and conditions of employment of certain people employed at the Plankinton House; that the unions were recognized as the exclusive bargaining agents for the employees who came within the jurisdiction of the respective unions, and allege that said contract further provided for what is commonly known as a closed shop or all-union shop, which provided that all employees subject to the jurisdiction of the unions shall be and remain members in good standing in the union in order to retain their jobs, and which provided further that new employees, where the union could not furnish the employer with employees, and also in cases of emergency, might be employed

by the employer even though such persons were not members of the union, provided such employees became members of the union within fifteen days from the date of employment; that by said contract employer agreed not to keep in his employ any employee then a member or who thereafter became a member of the union who relinquishes his membership in the union.

Respondents admit that the contract was to be effective commencing June 16, 1938, and was to continue for a period of one year, ending June
146 15, 1939, and for subsequent consecutive one year renewals unless either party thereto served notice in writing on the other party at least thirty days before the expiration of such year that such party desired to terminate the contract at the end of such current year; that said contract further provided that either party may serve notice in writing upon the other party within thirty days before the termination of such contract year that it desired that such contract continue for an additional year and that such party desired to negotiate hours, wages, and working conditions for the following contract year, and that when such a notice was sent and the other party had not sent any cancellation notice the contract continued in force and the terms agreed upon by the subsequent negotiations would be retroactive from the date of the commencement of any such year, and that in the event the parties could not reach an agreement through negotiations on or before thirty days after the termination of the preceding contract year the dispute should be submitted to arbitration.

Respondents deny that all of said unions notified complainant that they desired to negotiate changes in the existing contract, as alleged in the complaint in paragraph numbered 5, and deny that complainant served notice on all of the respondent unions that complainant desired changes. Respondents allege in regard thereto that by virtue of whatever notices were served upon any of the respective parties the contract afore referred to continued in force for another contract year, but that changes affecting hours, wages, and working conditions, as embodied in the demands of Local 122, Hotel & Restaurant Employees' Union, af-
147 fected only said union and not any of the other respondent unions.

Respondents Laundry Workers, Bartenders, Operating Engineers, and Building Trades unions deny that any notice was sent them by complainant, and deny that complainant sent them any notice in accordance with the terms of the contract requesting changes in the contract for the year commencing June 16, 1939, and ending June 15, 1940.

Respondents allege that by virtue of the labor contract afore referred to, and by operation of law, the contract afore referred to continued without any changes for the Bartenders, Engineers, and Building Trades unions; that said contract continued in all respects excepting the question of vacations with pay for the Laundry Workers' Union; that said contract continued in all respects excepting as to such changes demanded by Local 122, Hotel and Restaurant Employees' Union, for Local 122, and particularly in all of said instances

the closed shop clause of said contract continued for the contract year ending June 15, 1940.

Respondents further allege that negotiations referred to in said paragraph numbered 5 were on the changes demanded by Local 122, Hotel & Restaurant Employees' Union; that a question arose as to whether or not negotiations were proper on the changes proposed by complainant as affecting Local 122, Hotel & Restaurant Employees' Union, and alleges that in any event the closed-shop clause was not a subject for change.

Further answering paragraph numbered 5, respondents allege that arbitration was had subject to objections on the part of the unions on the scope of said arbitration, and that a majority of
148 the Board had rendered an advisory award, which was not binding upon any of the parties unless both parties agreed thereto. Respondents further allege that erroneously said award purported to affect all respondent unions. Respondents further allege, upon information and belief, that the so-called fifth arbitrator erroneously included in the arbitration award a provision that if the unions desired an all-union agreement (closed shop) the same might be had upon a three-fourths vote, as alleged in the complaint; that said fifth arbitrator erred in including such provision in the advisory arbitration award in that he ignored the terms of the contract and misinterpreted the law upon which he based such award.

Respondents further allege that such advisory arbitration award exceeded the bounds of the ar-

bitration, was contrary to law, and was unacceptable to the unions; that it proposed to cover some of respondent locals which had not submitted their matters to arbitration, and of whom the complainant requested no arbitration.

Respondents further allege that by the terms of the arbitration and the contract the arbitration was of no effect unless the parties thereto mutually accepted the same, and that the union had the right to strike and the employer to lock out the union in the event either party did not care to accept such arbitration award.

Further answering said paragraph numbered 5 respondents allege that the strike was called in furtherance of a labor dispute affecting said complainant, and that said strike, advertising, picketing, refusal to work are legal and an exercise of the constitutional rights of free speech and free
149 assemblage of all respondents; that the exercise of such rights, privileges and immunities afforded by the constitutions of both the United States and the State of Wisconsin do not afford any cause for action in behalf of complainant, and any other person or persons; that any alleged or attempted legislation to the contrary is and would be unconstitutional and void; that the so-called Chapter 57 of the Laws of Wisconsin 1939, and commonly known as the Wisconsin Employment Peace Act, is unconstitutional and void and of no effect whatsoever.

VII.

Answering paragraph numbered 6 of the complaint herein respondents reallege such matters

alleged in answer to paragraph 5, which are applicable to paragraph numbered 6, and specifically deny any overt acts illegal in nature or the doing of any illegal acts, and deny engaging in any unfair labor practices and violations of any act, alleged or otherwise.

Answering subdivision (a) of paragraph numbered 6 in said complaint respondents deny that Section 111.06 (2) (c) has any legal effect and application in regard thereto; that the same is unconstitutional and void; respondents deny that the named respondents mentioned in said paragraphs 6 (a) were guilty of any acts, alleged or otherwise, which were in violation of law, or that there can be a violation of an illegal and unconstitutional act, or of illegal provisions of law.

Answering subdivision (b) of paragraph numbered 6 of said complaint respondents deny the same.

Answering subdivision (c) of paragraph numbered 6 of said complaint respondents deny the same.

Further answering, subdivision (c) of paragraph numbered 6 respondents allege that the strike was called in furtherance of a labor dispute affecting said complainant; that deliveries ceased, and union-minded persons refused to go through a picket line or have anything to do with complainant, which is looked upon and treated as unfair to **organized labor** by organized labor; that the acts of picketing, advertising, refusal to go through the picket line, and refusal to transact

business with complainant were performed by respondents or other persons sympathetic with the union's cause, in furtherance of the exercise of the constitutional rights of free speech and free assemblage of said respondents; that the exercise of such rights, privileges and immunities, afforded by the Constitutions of both the United States of America and the State of Wisconsin, do not afford any cause for action to complainant or any other person arising out of the matters referred to in this allegation.

Answering subdivision (d) of paragraph numbered 6 of said complaint, respondents deny the same.

Answering subdivision (e) of paragraph numbered 6 of said complaint, respondents deny the same.

Answering subdivision (f) of paragraph numbered 7 of said complaint, respondents deny the same.

VIII.

Further answering said complaint respondents deny each and every material allegation not heretofore specifically admitted, denied or qualified.

151 Further answering the complaint herein, respondents allege that complainant does not come before the Wisconsin Employment Relations Board with clean hands, and alleges in regard thereto that complainant has been guilty of engaging, and is still engaging, in unlawful labor practices within the meaning of Section 111.06 of the Wisconsin Statutes, if said act were con-

stitutional, which respondent denies; that respondents charge complainant with having violated Section 111.06 (1), (a), (b), (c), (f) and (1) in that said complainant has interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 111.04 of the Wisconsin Statutes in that it has initiated, created, dominated, encouraged the formation of a company union, and it has discouraged membership in the respondent unions; that it violated the terms of a collective bargaining agreement, and committed a crime and misdemeanor in connection with the controversy arising out of the employment relations between the complainant and members of the respondent unions.

Further answering said complaint, respondents allege that said complainant is engaged in interstate commerce; that by virtue of the nature of the business of the said complainant in that the same is in interstate commerce and affects interstate commerce, the so-called Wisconsin Employment Relations Act, known as Chapter 57 of the Laws of Wisconsin 1939, does not affect the operation of said complainant.

That the law applicable to employment relations, affecting complainant and its employees, is covered by the National Labor Relations Act
152 (U. S. Code, Title 29, Chapter 7, paragraphs 151 through 166).

That the Wisconsin Employment Relations Board has no jurisdiction in matters affecting the employer-employee relationship of complainant and its employees, nor over respondents, concerning the matters alleged in said complaint.

Further answering, respondents allege that particularly in such matters where the Wisconsin Employment Relations Act differs from the National Labor Relations Act the same is not applicable to an employer-employee relationship involving employers engaged in interstate commerce.

Further answering said complaint, respondents allege that the Wisconsin Employment Relations Act, known as Chapter 57 of the Laws of the State of Wisconsin for the year 1939, is unconstitutional and void.

Wherefore, respondents pray that the complaint of said complainant be dismissed in accordance with law.

153 **Verification.**

154 **Cover.**

155 **Petition for intervention by Independent Union of Plankinton House Employees.**

156 **Verification.**

157 **Cover.**

158- **Petition of Independent Union of Plankinton**
159 **House Employees for determination of representation.**

160 **Cover.**

TESTIMONY.

161–834 TESTIMONY.

161–163 Index to witnesses.

164–166 List of exhibits.

167 Appearances:

Richardson, Robertson, Reeder & Stearns, by C. M. Robertson, Esq., and Herman M. Knoeller, Esq., on behalf of the complainant.

Padway, Goldberg & Tarrell, by I. E. Goldberg, Esq., on behalf of the respondents.

George Burns, Esq., on behalf of the Independent Organization of the Plankinton House Employees.

168–170 Discussion with respect to pendency of Circuit Court action involving same subject matter.

170 Mr. George Burns: As the attorney for the Independent Organization of the Plankinton House Employees, I am filing a petition for intervention in these proceedings and also a petition for an election to be held amongst the employees of the Plankinton House Company at the Plankinton House, the Plankinton House Parking Station and the Kilbourn Hotel.

171 Mr. Goldberg: I object to the petition for intervention since the Independent Union is a company union and to the petition for election because the rights of the parties have been fixed by contract, and because a petition for election and determination of representatives has been filed by

Local 122, one of the respondents, with the National Labor Relations Board about three weeks ago.

172 In addition to the above objections to the petition for intervention and the petition for an election, respondents move that these proceedings be dismissed for the following reasons:

1. Plankinton House Company is engaged in interstate commerce, and therefore the proper tribunal to hear the matter is the National Labor Relations Board.

2. Chapter 57 of the Laws of Wisconsin 1939 is unconstitutional and void.

3. On the face of the pleadings it appears that there is a contract in existence which by operation of law and the acts of the respective parties continues to June 15, 1940.

Commissioner Gooding: The motions will be denied and the motion on behalf of the Independent Organization of Plankinton House Employees to intervene is granted, as well as the petition for election.

172–177 Preliminary statement by counsel for complainants.

177–181 Preliminary statements by counsel for respondents.

181 Mr. Goldberg: I stipulate that there was no ballot taken in accordance with the provisions of Section 111.06, Subsection (e), Wisconsin Statutes 1939.

184 **PHIL L. VALLEY,**

a witness called adversely by the complainant, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

My name is Phil Valley and I am the business manager of Local 122, Hotel & Restaurant Employees Local Union. I hold no other office with that union. Mr. Al Gamby is the president.

185 My official duties are to book all jobs, handle all contracts, see that the other officers do their work in their territory and keep their territory clean by keeping all union members on the jobs and seeing to it that their dues are paid and that they are in good standing with the local union. I have the right to call a strike when it is authorized by the body. When a strike is called I appoint a picket captain, who has the full power to act in putting on pickets and handling pickets.

186- (There was marked, identified by the witness or
195 stipulated by counsel, and introduced into evidence the following described exhibits:

Exhibit 1. The 1938 collective bargaining agreement existing between the respondent union, Local 122, and the Plankinton House Company.

Exhibit 2. Notice, dated May 15, sent by the union, stating its intention to continue the contract, but to negotiate changes.

Exhibit 3. Notice, dated May 11, sent May 15, to Local 122, received May 16 by Local 122, indicating the intention of the Plankinton House to revise certain terms.

Exhibit 4. Union's request for negotiations, dated May 29, 1939.

Exhibit 5. Revisions requested by the union, dated June 27.

Exhibit 6. Revisions requested by the Company under date of July 1, 1939, delivered July 3, 1939.

Exhibit 7. Demand by union for arbitration.

Exhibit 8. Consent to naming of fifth arbitrator by Wisconsin Employment Relations Board.

Exhibit 9. Arbitration award, Phil L. Valley and Arthur Johnson, union representatives, dissenting, October 30, 1939.

Exhibit 10. Acceptance by hotel of award dated November 1, 1939.

Exhibit 11. Acknowledgment of hotel's acceptance by union.

Exhibit 12. Letter sent November 11, asking for 10 per cent increase and signature to supplemental agreement.

Exhibit 13. Letter sent November 28, calling attention to the fact that the hotel must still employ employees who are members in good standing in the union.)

192 On November 2, 1939, I directed all the waitresses and all the workers to cease work. I had been in the hotel for two days talking to Mr. Wood and called Mr. Robertson before I pulled the strike.

193 I did not direct those workers to form a picket line nor did I bring any other pickets to the hotel. The members of the union started to picket as

soon as they walked out of the hotel. They started at about 4 o'clock and it was 5 or 5:30 before they all left their employment. I would say that there were 75 or 80 in the picket line. These seventy-five were not at each entrance of the hotel, but were all around the hotel and split up at each entrance. Picketing is continuing to this day and hour.

197 As business agent of Local 122, I have under my control the 1937 contract and I also have the notices of revisions demanded by the unions in 1938 for the purpose of modifying the then existing contract, the 1937 contract that was about to expire in 1938. I will produce them for the Board.

198 Mr. John Heisdorf is a member of Local 122 and has been for at least six years that I know of. He holds the position of vice-president.

199 He has held that office for one year and his duties are to act as business agent in territory assigned to him.

The chairman of the picket captains is John Alexander, who has appointed Mr. Heisdorf to take charge of the pickets at the Plankinton and Kilbourn Hotels and to oversee the union activities in such hotels. I am present at times on the picket lines. On November 4, 1939, I was present at the time that the florist truck pulled up and I went to call the captain of police to find out if they could go through the picket line. When I
200 got back the arrest was already made and I don't know anything about it. My organization provided bail for him.

Mr. Goldberg: Just a minute. I move that the question and answer be stricken.

Q. I might say——

Commissioner Gooding: Motion is denied.

Q. Did your organization provide counsel for John Heisdorf?

Mr. Goldberg: I object to that question; it's not material to the issues here.

Commissioner Gooding: Overruled.

Q. Will you please answer?

Mr. Goldberg: If the Board please——

Q. I guess the order's been made. I don't know any reason for argument.

Commissioner Gooding: Go ahead, we will hear you.

(Argument by counsel based upon Section 103.53 Wis. Stats.)

201 Commissioner Gooding: Objection is overruled; witness may answer. What is the last question and answer, please?

We did provide counsel for John Heisdorf because of his arrest for misconduct on November 4, 1939. Our lawyer is counsel for our whole organization. It doesn't make any difference which one is arrested.

202 After this occurrence Mr. Heisdorf did not make any report to me. I did not confer with him as to the facts surrounding his arrest for disorderly conduct. I did not order him back to the picket line, but I know that a day or two after he did go back on the picket line and that he has been there ever since at different occasions. I was not present on November 10, 1939, when Mr.

Heisdorf dumped several cans of cubed ice into the street, but I arrived there later and conferred with Mr. Heisdorf about it.

203 I did not send Mr. Heisdorf back to the picket line after that occasion nor did I object to his being there later.

Charles McLaughlin is a member of our union and has been for six years. He was an assistant business agent in 1938 and during the year 1939 was an assistant to the secretary. Our organization provided bail for Mr. Charles McLaughlin on November 4, 1939, when he was arrested and also provided counsel for him.

204 Our organization paid the fine for McLaughlin when he was arrested for disorderly conduct. I was not present on November 17th, when Charles McLaughlin was again arrested for disorderly conduct at the Plankinton Hotel. I did not send Mr. McLaughlin back to the picket line nor did I see him on the picket line since. He has never been on the picket line since.

205 He was arrested on November 4, 1939, and returned on the picket line and remained on the picket line on November 17, 1939, when he was again arrested. We again bailed him out, provided counsel fees for him and paid his fine. He is still a member of our organization. Neither Mr. McLaughlin nor Mr. Heisdorf are on the membership list for the Plankinton or Kilbourn Hotels.

206 Exhibit No. 14 for identification is a complete list as far as I know of the employees, their addresses and occupations at the Plankinton Hotel as of today. Exhibit No. 15 for identification sets

forth the names and addresses and occupations of all of the employees working at the Kilbourn Hotel as of today, who are members of the union. (Exhibits 14 and 15 offered into evidence. Objection by Mr. Goldberg. Received by Board.)

208 Neither Mr. Heisdorf nor Mr. McLaughlin appears on those lists.

I know James O'Brien. He used to be a mem-
209 ber of our union and is a former prize fighter. I don't know if he lived in Chicago. He did not come up from Chicago with me. He was a member of the union about six months, but has not been for the last two years. I received a report of Mr. O'Brien being arrested at the Plankinton Hotel on November 7, 1939, for striking Paul Ziebell. We did not provide bail or counsel for Mr. O'Brien. He was represented by Mr. Jack Goldberg of the law firm of Padway, Goldberg & Tarrell.

210 Our organization did not pay the fine for Mr. O'Brien. I don't know that Mr. O'Brien returned to the picket line after he was bailed out. I don't know who Mr. O'Brien is.

I don't know Charles Alden. I don't recall his name, but I may know him when I see him. His name appears on Exhibit 14, which means that he is a member of our union.

221 We pay our pickets a certain hourly wage for picketing. The chairman of the picket captains keeps a careful watch and scrutiny of what the organization pays out for picket duty. He checks with the secretary.

I personally did not know that James O'Brien

was ever on the picket line at the Plankinton Hotel.

Charles Alden is still a member of the union, but I was not present when he engaged in a fist fight with Robert Jeske, an employee of the hotel, on November 10, 1939. I got a report of the affair, but I did not know whether a member of the union or not had been engaged in the fight. I don't
212 know whether Charles Alden is now on picket duty.

I don't know Larry McAllen and I don't know if he is a member of the union, but I might know him if I see him. I don't know him by name. I was not present when McAllen was arrested on November 17th for disorderly conduct, and I don't know if the organization provided bail for him. I think Mr. Goldberg's office represented him.

213 Mr. Goldberg's office is our office as far as legal union business is concerned. I do not know whether our organization paid the fine for Mr. McAllen.

Thomas J. O'Mahr belongs to the union, but does not hold any office. He worked at the Plankinton Hotel and was and still is on the picket line. I was not present on November 14th when Mr. O'Mahr was arrested for disorderly conduct for striking and kicking Edward Knopf, but report was made to me about it.

214 We provided bail and counsel for Mr. O'Mahr and paid his fine. He is now back on the picket line.

Mr. Joseph Hofich is a member of our organization and holds the office of outside guard. He also is captain of the pickets at the Plankinton Hotel.

I was not present on November 19, 1939, when Mr. Hofich was arrested by the police for disorderly conduct at the Plankinton Hotel when Rudolph Sciano, a working employee, was struck and injured.

215 I received a report and our organization provided bail for Mr. Hofich and also counsel. We did not pay his fine. He has not been tried yet.

My true name is Phil L. Valley and that always has been my name. I never changed it and was never known as Felix Scalli. I was born in Chicago. I have been with Local 122 for six years.

216 (Charles McLaughlin, called adversely as a witness by counsel for the plaintiff, over objection.)

217 **CHARLES McLAUGHLIN,**

called adversely by the complainant, being first duly sworn, on oath testified as follows:

Adverse Examination, by Mr. Knoeller.

I have no official position with the union. I do not know how long I have been a member, but I am a member today. I have been a member possibly eight years.

218 I was at the Plankinton Hotel on November 4, 1939, when the florist attempted to make a delivery. I was on the picket line off and on from the time the strike was called. I no longer am on that picket line. The last time I was on the picket line was at the time of my last conviction. I provided my own bail on November 4, 1939. The Local Joint Executive Board provided counsel for me.

This Board includes representatives of Local 122. It does not include representatives of the International Laundry Workers Local 174.

219 The Bartenders International League of America, Local No. 64, is represented on the Joint Executive Board. The Milwaukee Building Trades Council is not.

After my arrest and conviction on November 4 I returned to the picket line. I was on the picket line on November 17, when I was again arrested for disorderly conduct with respect to an assault upon Lester Raasch, a bellman. I was found guilty and union counsel was retained for me, but the union did not pay my fine and the
220 union did not provide bail. I have been on the picket line as a representative of the union.

Examination, by Mr. Goldberg.

The first time I was arrested and convicted for disorder on the picket line was when the florist incident occurred. That was when Jack Heisdorf and myself tried to ask the florist delivery boy not to go through the picket line.

Objection was made as to the form of the question and because it was not proper re-
221 direct examination. Objection sustained.

After each of the occurrences I was summoned before the Executive Board, at which was present Mr. Goldberg and Mr. John Alexander, the man in charge of the pickets. I was reprimanded severely for getting into that altercation.

222 When I was summoned before the Board after

my first arrest I was told that the organization did not condone such tactics and, above all, from one of their own representatives, and that they did not want a repetition of it again.

223 **JOHN HEISDORF,**

called as a witness adversely on behalf of the complainant, being first duly sworn, on oath testified as follows:

Examination, by Mr. Knoeller.

My name is John Heisdorf and I live at 1028 North Fifteenth street. I am vice-president of Local 122 and assistant business manager, as well as a union member. I first joined the union about ten years ago.

224 I have been vice-president and assistant business manager since February. My official duties consist of taking care of complaints, signing up new members, checking up hotels and restaurants for the employees and seeing that conditions are maintained. I devote my full time to that work. At places where a strike is called and picketing is done my duties are supervisory. I keep control of the pickets, since somebody has to be at the head to keep control of them. I don't mean violence. I mean that some pickets would leave the line and you wouldn't have any pickets left; somebody has to be there to keep a certain number of pickets on the line. I control the number of pickets on the line and direct the pickets as to their actions in case of doubt.

225 I was arrested for disorderly conduct at the

Plankinton Hotel when a florist attempted to make a delivery of flowers. Bail was not provided by the union. All union members are entitled to defense counsel at any time, and I received my defense counsel from the union. I paid the bail myself. I was fined. I made a report to the union as to what occurred on November 4, 1939. I returned to the picket line the following day. I did not return to the picket line on the same day that I was bailed out.

I did not on November 10, 1939, take hold of certain cans of ice that were to be delivered to the Plankinton House and dumped them into the street. I might have got mixed up in them in the shuffle, but I never tipped them over. Frankly, if Wood would have kept his busboys out, there
226 wouldn't have been any trouble with the cans. I had charge of the pickets on that particular day. I told you on the street about two or three days later the four cans were tipped over. There was no secret about it. Everybody knows four cans were tipped over. It is not necessarily true that our pickets tipped them over. I just made the statement that if Wood's busboys had not tried to carry them and overbalanced themselves they might not have got tipped over. They tried to carry too many cans. I was trying to persuade the driver to take the cans back to the ice company. I had persuaded him to take them back. In fact, he had started to move those cans into his car when about ten busboys came out of the hotel with their shirt sleeves rolled up, no hats or coats on, buzzed through the picket line, knocked

down two of the colored pickets, and before I could get around to the front of the car the rumpus had started. I tried to stop it. I did not lay hands on the busboys at any time.

227 I did not lay hands on the cans at any time. I made a report to the union about that affair. I am not on the picket line now. I have been in my territory for approximately two and a half weeks. I have a lot of work to do in my territory. The Plankinton Hotel and Kilbourn Hotel are in my territory. I do not do any picketing at all. I do not manage any of the pickets at the Plankinton or Kilbourn Hotels since the ice was tipped over.

228 **Cross-Examination**, by Mr. Goldberg.

The two colored members who were tipped over and pushed down by the bus boys were girls. I was fined $5.00 and costs, but the Judge saw my record and said he would suspend my sentence and put me on thirty days probation. I have never before been in any trouble. As a result of being arrested, I was asked to appear before the union executive board. Mr. Goldberg was also present. I was told to be peaceful on the picket line and not to do anything that could be construed as causing a violation of law, that the organization would not stand for it, and they did not want to give the hotels any "out," that I was to be instructed to keep picketing peaceful and not get myself in any kind of a jam. Neither the executive board nor our attorney said that I did the proper thing at that time.

229 They told me that my actions were wrong, that

I should stay far enough away that I wouldn't have got into the jam.

Adverse Examination, by Mr. Knoeller.

My case was adjourned until December 18, 1939, subject to dismissal or suspension if I didn't appear in court in thirty days. My bail has been refunded.

JOHN ALEXANDER,

called adversely as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Adverse Examination, by Mr. Knoeller.

My official capacity with Local 122 is chairman of the grievance and complaints department, that is, grievances of the people against chiseling employers.

230 At the present time I am chairman of the strike committee, with respect to the strike that is now in progress at the Hotel Plankinton and Hotel Kilbourne and the Hotel Wisconsin. My duties as chairman of the strike committee are to see to it that there are pickets all the time, twenty-four hours of the time, day and night, at these three hotels, also four times within each twenty-four hours four different shifts of pickets. I give them instructions as to how to behave on the picket lines. I also appointed officials of the union, men preferably, as head of each picket line at each time. I occasionally visit the various picket lines to see how they are progressing with their work. I must, because I preach to them that at all times

peace must be maintained, and I occasionally visit the picket lines to see to it that peace is maintained at all times.

"Hire" is not the proper term for getting the pickets to go on the line. Primarily the pickets are strikers, members of Local 122, and members of all the other unions involved in this strike. I must check up on those pickets that come from other unions, and occasionally members of the American Federation of Labor that may come to give their moral support occasionally. It is my business to see to it that they are legitimate members of the American Federation of Labor, and also instruct them as to how to behave on the picket
231 line, because in our opinion public opinion with us means everything. I wouldn't say that I select them or train them. I am not a general training an army. I can't show anyone how to walk, or it doesn't take brains to know how to carry a sign. I am not getting smart; I am trying to answer your questions the way you put them to me. I instruct the pickets how to act on the picket line. I tell them where to perform the picket duty. I visit the picket line from time to time to see how they are getting along. I absolutely did not select James O'Brien to do picket duty at the Plankinton Hotel.

232 I did pay O'Brien on one occasion on picket duty. I sent Charles A. McLaughlin to supervise the pickets at the Plankinton Hotel and to see to it that peace is maintained. These were my instructions to Brother McLaughlin. I also directed Thomas O'Mahr to perform picket duty at the hotels. I instructed them how to act. I

also instructed Larry McAllen and Joseph Hofich how to act on the picket line. Not all of these same parties are still doing picket duty on the picket lines. For instance, I forbidded Pat O'Brien to show his face again on the picket line.

233 I forbidded Brother McLaughlin to show his face on the picket line again. I had reprimanded the others very severely and told them they would not go again on the picket line if anything happened, even though they might be innocent. I didn't want them mixed up in any fear whatever. Outside of Mr. McLaughlin and Mr. O'Brien the others are still being directed by me to do picket duty at the Plankinton and Kilbourn Hotels. Mr. Heisdorf doesn't do any more picket duty, nor does McAllen, nor does O'Brien. Joseph Hofich occasionally does do picket duty. He stays a few minutes at each time, but he doesn't stay on the picket line. He supervises.

234 I know that several of the pickets whom I have mentioned have been arrested for disorderly conduct on the picket line. I have been in court all this afternoon while testimony was taken in that respect. These pickets are still members in good standing today. Jack Heisdorf, Charles McLaughlin, McAllen, Joseph Hofrich and Thomas O'Mahr are all members in good standing.

235 **Cross-Examination**, by Mr. Goldberg.

I did not send O'Brien on the picket line. He came up to me and asked me if I was chairman of the strike committee and if I had authority to

pay pickets. I told him I did. He said he had been picketing. I told him that I didn't know him; that I had to check up on him and see who he was before I could consider him a picket. I found out that he was a member of our local before, but he wasn't a member then, and told him he couldn't go on the picket line any more. I paid him off then and there, and since that time I know O'Brien has not been on the picket line. I saw to it. He went on the picket line in the first instance absolutely on his own volition. He knew there was a strike, so he went to the picket line and wanted me to pay him for the hours he put in. I paid him off and told him to stay away. We went along with the members of the American Federation of Labor, especially with the unions involved. I did not pay Mr. O'Brien several times before he was discharged from the picket line.

236 I did not know that he was performing picket duty before he was arrested and convicted on November 7, 1939. I found out later. He had never reported to me as chairman of the strike committee. I made it a point with everyone on the picket line that unless they registered with me, with the department, with the strike committee, they had no money coming, and nothing would be given to them. That is why I paid him once and then fired him. Although I am not a member of the executive board, I attended executive board meetings as chairman of the strike committee, where I had to give reports to the
237 executive board as to what was what on the

picket line. At these executive board meetings, particularly in the case of Brother McLaughlin, I stressed and emphasized the fact that under no circumstances can we allow any violence on the picket line, even though our people were provoked time and time again. I explained that as long as public opinion is with us we had a good chance of winning, and, therefore, I advised Brother McLaughlin and everyone else present to co-operate to the best of their ability to see to it that peaceful picketing was maintained. I also was pretty "hot" that day, and I told members of the executive board that I would prefer charges against anyone who may be the cause of further violence on the picket line and demand his expulsion from the International.

At these meetings Chuck McLaughlin was reprimanded by the president of the executive board and every member that was present, to the best of my memory, because of his arrest on two separate occasions. Also, he explained that he
238 didn't hit anybody, and that the whole thing was a misundertanding of some imaginative people. We felt, inasmuch as he was in some kind of a fight, he had to do his utmost and stay away from any kind of a fight.

The same thing happened in the cases of Jack Heisdorf and Joe Hofich.

239 **WILLIAM KOMES,**

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

My name is William Komes. I am head waiter at the Plankinton Hotel and was on November 4, 1939.

240 On that day at about 3 o'clock in the afternoon August F. Kellner, florist, tried to make a delivery. I was asked to unlock the door in the sky room, which I did. When I got there to unlock the door, five or six men ran from across the street to where I was standing. One of the men called the other pickets who were picketing at the main door, and they all started to picket. As I tried to open the door to let one of the men in, who was going to do the decorating, they shoved the door in my face. I stepped back and knocked a screen over. Then when I saw what had happened I went to the door again and opened it about two feet, I imagine, and was going to let one of them in. They had some decorations in their hands. The pickets went to work and took it out of their hands, trampled on it and pushed the fellow aside. I think there were five or six pickets that ran across from the filling station and were there at that time. The sky room is a first floor dining room at the hotel, having a Michigan street entrance. The delivery men were bringing in some decorations, I think it was bitter sweet they had in their hands, which was

knocked out of their hands and trampled on. The fellows were shoved aside. The policemen came and they restored the picket line, that is,
241 restored peace. The fellows came in and done their decorating and brought in their decorations. The pickets pulled the decorations out of their hands and trampled on them. They were damaged beyond repair and didn't bring any of them in. When I attempted to open the door, the pickets called me scab and everything like that. I don't remember all that was said, there was so much said. They did not threaten me at all.

Cross-Examination, by Mr. Goldberg.

I am not a member of the union. I don't have a hiring and firing capacity, just head waiter. As such, I am not eligible to union membership. I have been working in the Plankington House this past year and although they have a closed shop contract, I was not required to join the union. I had been there during the entire strike.
242 During all the time of the strike, which has just completed its first month, there were pickets there twenty-four hours a day. They paraded around three different entrances. I have gone in and out of the hotel and no one has stopped me from coming in and out. They have threatened me, called me scab and have said that I had better look out or they would get me. Nobody assaulted me and there were policemen there all the time.
243 I don't know how many disturbances there had been during the thirty or thirty-one days of strik-

ing. The police department was there at all times. I did not throw a can of tomatoes out of the window at the pickets, nor did I know that that happened. I did not throw any water while the pickets were picketing.

244 I don't know who did nor do I know that happened.

The men from the florist were trying to deliver some decorations for the florists' convention. I don't know that the pickets asked him not to go through the picket line.

245 **JOSEPH MUELLER,**

called as a witness on behalf of the complainant, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a florist decorator for the August F. Kellner Company. On November 4, 1939, I tried to make a delivery at the Plankington Hotel at about 3 o'clock in the afternoon. When I tried to deliver the decorations, the policemen formed a line that I was supposed to walk in back of. While I was walking one of pickets threw a fist at me and the other one knocked the bittersweet out of my hand. It was crushed by the whole mob walking over it, as well as the police. There were about fifteen pickets there at the time. They
246 did not say anything to me. The two pickets who were involved were Charles McLaughlin and John Heisdorf. They did not hit me, although they did swing at me. They destroyed the deco-

rations. After that the pickets went away, more police arrived and we kept on working. We picked up the decorations but it wasn't any good any more.

247 **Cross-Examination**, by Mr. Goldberg.

The pickets didn't hit me, the policemen grabbed them. When we pulled up, the pickets had told us that we shouldn't go in because they had a dispute with the boss and they tried to talk us out of making delivery. I called my boss and he told me to go ahead and deliver it. I don't know whether the police department stepped on the stuff or not. There was a wrangle. I wouldn't blame anybody for it. When the police tried to protect us, they swung at me but did not hit me.

248 It is not true that in the District Court I did not know who it was who swung at me.

PEGGY HEHMEYER,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination.

My name is Peggy Hehmeyer. I work at the hotel as head waitress and banquet manager. On November 4, 1939, at 3 o'clock in the afternoon, when the florist company came to deliver the decorations for the convention, I went to the door to assist them.

249 Mr. Komes stood at the door when one of the pickets came and slammed the door in his face.

Mr. Komes fell back against the screen and knocked the screen over. There were fifteen or twenty pickets there and I was told that I would never get another job in this town. I would recogniże the two people that made this remark to me, but I did not recognize Mr. Heisdorf or Mr. McLaughlin as being present at that time. I could see through the window of the door that the floral decorations were knocked from the florist boy's hand and trampled upon by one of the pickets. The only threat made was by one of the men, who was a stranger to me, and who remarked that he would get me, or I would not get another job. He was a picket.

I was present on November 10, 1939, when an attempt was made to deliver ice cubes at the hotel at about noon or shortly before of that day. I saw one can of ice come in, so went to the door to see the rest of them.

250 I noticed there were a great many strangers around and there was some commotion going on, so I called two or three or four or five boys to assist me with the ice. The ice came in large new garbage containers in cube form. They were galvanized cans about four feet high and twenty-seven or thirty inches in circumference. I think five or six cans had been ordered for delivery. My ys came out in their uniforms, because they didn't have time to get into street clothes to see what they could do in bringing in the ice. I came out just in time to see Mr. Alden struggling with our boy, Bob Jeske. He was pounding him about the head. Bod didn't even strike back, as far as

I could see, but he had to drop the can which he held under his arm. They were trying to unload the other cans of ice from the rear compartment of the car when I saw Mr. Heisdorf struggling with one of my boys and stopping him. The boys
251 couldn't bring the ice in, because it was too much to contend with. I saw Mr. Heisdorf pull the cans of ice out of the arms of the other boys and dump it on the street. All the other four or five cans of ice were tipped into the street and left there. We were only fortunate in getting one can in.

Cross-Examination, by Mr. Goldberg.

When I said that I believed Mr. Heisdorf tipped the can I should have said that I did know, I am positive he did. Ten or twelve of my boys ran out to bring the ice in.

252 I did not see a couple of colored girls laying on the sidewalk or roadway. I didn't see the busboys throw the girls down. I don't know how many pickets were on the line that day. There were so many people out there all around this automobile and all around these ice cans and I couldn't say who were pickets and who weren't. I know there weren't more than perhaps ten of our own employees out there. I didn't recognize the others.

The ice was delivered in a car which was parked at the curb in front of our hotel on Michigan
253 street near the Michigan street main entrance close to the telegraph office. Looking out from the inside of the hotel it was parked to the left of the entrance. I was in the hotel, but ran out into

the street. I saw the beginning of the commotion, but did not see two girls knocked down. Around this automobile there were the pickets and ten or twelve of my boys.

254 I was right in back of Mr. Alden. I don't believe there were ten busboys. There were only about five or six. The street was pretty crowded. I was off to one side, but in plain vision of the cans and watching Mr. Alden at the same time. In spite of the crowd around there, there was a big opening so that I could see what was going on inside. Alden was off to the right of the automobile. He was in the street, at th front of
255 the auto, and I was right behind him. The cans were being unloaded at the rear. I was able to see Heisdorf, because I was practically in the middle of the street.

The florist situation took place at the entrance of the sky room on Michigan street. The door opens outward.

256 It is a clear pane glass having little frames. Mr. Komes was standing on one side of the door and I was right aside of him. I was in the lobby of the sky room. There are two sets of doors and I was standing between the outside door and the inside door. Mr. Komes was to my left. That is my
257 east. The doorway itself is in the south part of the building and opens south. He opened the door; I think I assisted him. We were both facing south when someone slammed the door shut. I am sure it was not a policeman. I was able to see
258 who it was, because I was facing south. The door is practically on the sidewalk line. I would recognize the man who slammed the door if I saw him.

He was a stranger to me. I don't know whether in slamming that door open either I or Mr. Komes hit this fellow who was passing by on the street.

I am in charge of the girls working in the dining room. They originally did not belong to the union.

259 Before our hotel signed up with the union I may have repeatedly expressed myself as being opposed to the union. I did not tell the girls that they did have to join the union on the 1937-1938 contract, nor did I express opinions at that time that I did not want them to join. I said that belonging to the union wasn't part of my policy, or part of the principle that I stand for. I did not forbid the girls to post notices in their dressing room.

260 I know Helen Martel. I don't know anything about a notice which she posted in the girls' dressing room concerning a special union meeting in 1939. I did not see any meeting notice. I heard there was a notice there and I did make inquiry, naturally, who posted it, because I was interested. I thought perhaps it was just something that wasn't official and I thought I had a right to know whether there was a notice there or not. That is the only reason I inquired. The girl did leave her employment shortly thereafter, but I did not make things miserable for her because she posted this
261 notice. She worked five or six hours a day and then told me she didn't want to work more than two hours a day. We have some girls who work short hours and some girls who work long hours, depending on their ability. I put the girls on the shift, but I never have discriminated with girls

because of belonging to the union or being active in the union. I don't know why Helen quit.

262 I did not tell the girls after the modified closed shop contract was signed in 1937 that they did not have to join the union. It is not true that at that time the girls got a raise and were told they didn't have to join the union. I was not present nor do I know that Mr. Wood addressed the girls and told them that they did not have to join the union under the contract that was signed.

263 I don't remember saying on the day that the strike was called to somebody in the kitchen, "When are you Communists going out on strike?" I know Fred Brant, but I don't recall whether I had any conversations with him that day. I don't remember making such statement.

264 I have never referred to the union employees there as Communists or the striking employees. When the arbitration award came down I attended a meeting in room 212, which was called by Mr. Wood.

265 Mr. Wood told the members at that time that the arbitration board had made a decision, which he was willing to accept. I was in the room when you called Mr. Wood to ask whether he had mailed the contract, and he said, "Yes, it's in the mail signed." He told the employees that the new contract was handed down by the arbitration board, that it was the same thing as the Supreme Court Judge said and must stand. He said the contract wasn't anything that either the union or the hotels could say was their own contract, because it was decided by the arbitration board. He picked two or three other girls to call the

members in there and then asked me to assist them. I told only two or three people. I didn't know why he was calling the meeting. He didn't speak to the employees about the arbitration award. He said that the new contract was there and that it was signed.

266 He didn't tell the employees that he had tried to be a good boss. He didn't try to tell him why he thought the union refused to accept the contract. I don't remember anything else he said besides what I have already testified to. I don't remember him making any statement that he didn't know why he had to sign since he was already living up to the things the union wanted. I believe the question was brought up at this meeting about the union black-balling any member who did not go on strike. I don't believe I made any answer to it or any statement about that. I did not tell the employees that I did not believe the union would do such a thing.

267 I believe my reason for not wanting the employees to belong to the union is a personal reason. Unionism never seemed a part of my make-up. It just wasn't part of my principle. I was not opposed to it very badly nor was I for it very much. I was sort of neutral because I didn't understand unionism very well; I didn't talk unionism with my girls very much since our 268 contract has been signed and not since we entered into unionism. I don't believe I have discussed unionism at any time during the past year nor have I made any statements derogatory to the union.

I have charge of hiring and firing the girls in

the dining rooms, but am too busy to talk about anything but business around the hotel. It is not my business at the hotel to talk against the union. I have not discussed with Mr. Wood the attitude of the Plankinton House Company on unionism. I have called some of the girls over the phone since the strike began and asked them to come
269 back to work if they liked. I did not tell them that they would have jobs for life or that we would protect them, and that the union couldn't do anything about it. I was not present when Mr. Wood made any such statements.
270 I don't know which girls went and which girls didn't go to union meetings, so did not check on them because they attended meetings. I never made any statements derogatory to Phil Valley as business agent of the union.

When I phoned these waitresses to have them come back I didn't ask them to come back, but asked them if they wanted to come back. I did not refer to the union in those telephone conversations.

271 I never told any employee that the company was going to organize its own union, nor did I hear Wood tell that to anybody. I never told anybody about two weeks before this hearing that the hotel was going to file an injunction to protect those who were working. I may have promised the waitresses that if they wanted to have protection against pickets and the strangers on the street we would give them a place to stay. The day before the strike I gave a waitress by the name of Tess a vacation. I gave her a vacation to reprimand her and for her to think over

her conduct. I called her back before the thirty days were up.

272 A week ago Sunday we had a very fine turkey dinner at the hotel for all of the employees inside the house, at which Mr. Wood was present.

273 Mr. and Mrs. Hoffman were also present. Mr. Hoffman is the resident manager, while Mr. Wood is the general manager. The officers of the so-called independent union were also there. There were no speeches. We gave a few cheers and had a very fine dinner. We did a lot of joking and a lot of laughing and perhaps sang a song and had our picture taken.

274 The hotel never gave a party before for the employees because we were in operation and it was impossible to give a big party like that before. That was the only opportunity we had to get together at a party. I am not a member of the independent union nor have I signed any application blank. I have not asked my waitresses to join nor have I discussed the union with any of the employees. I still am opposed to unionism.

275 **ROBERT JESKE,**

called as a witness on behalf of the complai ant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a steward's assistant at the Plankinton Hotel and was such on November 10, 1939. At about noon of that day Mrs. Hehmeyer instructed us to go out and help get the ice in, because there were a large number of pickets out there.

We went out and I grabbed the bucket of ice with the assistance of another fellow.

276 When I came around to the ice car, Charles Alden, former doorman at the hotel, struck me in the face without saying anything. I didn't say anything to him, nor did I push him. He had been in the picket line. He struck me three or four times with his clenched fist in the face. I set the ice down, and when I later came to take it up again I found it had been dumped. I saw Jack Heisdorf on the picket line after the fight.

Cross-Examination, by Mr. Goldberg.

277 This was a regular automobile with a rear compartment in it. It had a large trunk in the rear, out of which I took the ice. I walked toward the front of the car on the street side. The altercation took place in the gutter, about a foot and a half from the curbstone, but right next to the front of the automobile. Alden was about a foot and a half from the curb and road.

278 Mrs. Hehmeyer was not in back of him when it started, but later she was in back of him.

WAYNE BANNING,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a bartender at the Plankinton Hotel. On November 10, 1939, I went out to help bring in the ice.

279 One of the fellows who was going to help me with the can couldn't get near enough to me. In the meantime the can had been banged around and part of its contents spilled so that I could carry it. In picking it up it was upset. When I tried to scoop part of it back into the can it was again upset. Heisdorf is the gentleman who upset the can. I don't know who dumped the can the first time. Mr. Heisdorf dumped it the second time. There were twenty-five or thirty people around there, but I don't know how many of them were pickets. I saw Charles Alden strike Robert Jeske more than one blow. I saw him
280 strike three blows. He had his arm around Jeske's neck and was poking him in the ribs.

Cross-Examination, by Mr. Goldberg.

When I saw the altercation between Jeske and Alden, Alden was leaning up against the left front fender of the automobile. I don't know if I saw the whole transaction. I don't know where it started. There were no arrests made at that
281 time, that I know of. I have been working at the hotel since July as an apprentice. I don't know if I am considered as a bartender as yet. I work back of the bar and assist in serving drinks. I
282 mix drinks also, and have a license as a bartender from the City of Milwaukee. I applied for my job to Mr. Wood. At first I assisted on the parking lot at different times, and the rest of the time I was a bartender. I went behind the bar in July, when I was first hired. I was not asked whether I was a member of the Bartenders' Union.

283 Mr. Wood did not ask me to join the Bartenders' Union in order to work there.

284 I live at 2518A West Michigan, and I lived in Milwaukee since 1931, but not regularly. I have lived here steady for the last two years and never worked at the hotel before.

286– (By stipulation and consent of the parties, the
288 following exhibits were offered and received:

Exhibit No. 16, being the 1938 proposed revision of the 1937 labor contracts.

Exhibit No. 17, being the original 1937 labor contract between the complainant and the respondent union.

Exhibit No. 18, being the minutes of the meeting of the four arbitrators on or about June 16, 1938.

Exhibit No. 19, transcript of testimony taken before the Board of Arbitration.)

288 **CHARLES COBEEN,**

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am the manager of the Students' Union at Marquette University. One of my duties is the handling of student employment.

On or about November 8, 1939, Mr. Valley called me on the telephone with respect to the students who were working part time for their meals at the Plankinton Hotel. He stated they were working since the strike had started and that the

union would have to insist that the University withdraw them from the Plankinton Hotel. He gave as his reason the fact that the students were aiding and helping the hotel by continuing to work there after the strike had started. At that time I had no definite knowledge of the individual students working there—most of them having secured their jobs on their own initiative.

289 I told Mr. Valley I would check on the situation. He stated that the students working there would have to be withdrawn or the union would be forced to stop all students working at other hotels and restaurants belonging to the union, which would throw several hundred students out of part-time work for their meals. He stated that this was not a threat, that the union had every intention of following through and carrying out this statement. I told Mr. Valley that the students had secured some of these jobs on their own initiative, and that the University as a rule did not try to interfere with any part-time work the students were doing unless it was in a place that was immoral or for some reason of that character. He stated that, regardless of this fact, at a meeting of the previous evening the union had insisted upon this point. I told him I would call him back after checking up the matter.

I talked to Father McCarthy, the president of the University, and acquainted him with the facts. Shortly thereafter two men came from the union to talk the situation over in person. Mr. Valley had told me that he would send somebody up to my office. They came about an hour later.

290 They restated the situation and said that the

students by working there were a bad influence on the employees of the Plankington who were on strike, and that the University should co-operate with the union in this respect. I again talked with Father McCarthy and told him that it would affect a large number of students who were dependent on these meal jobs as a means of staying in school, and that the union demanded immediate action. We were given until that evening to agree to remove the students from the Plankington. Father McCarthy asked me to contact the students working there, to find out how they felt about it and to put the point to them that their continued working there would jeopardize the jobs of the other students. He further stated that since it would be a burden on the students to give up these meal jobs we should feed the students until the strike was over, that is, feed those students working at the Plankington that would los their jobs.

I then contacted several of the students, put the proposition to them, and at least one of the boys went over to talk to Father McCarthy personally, because he did not wish to give up the job, stating that Mr. Wood treated him very fine and that there was no point at issue as far as he was concerned; that he was simply working for his meals and wanted to continue to do so. When I told him that it would throw the other students out of work he said he would then stop working. The other students stopped for the same reason, not wishing to feel that the responsibility for throwing a number of students out of work was partially on their shoulders.

That afternoon I spoke to Mr. Valley and related to him that we had contacted the students
291 and that they would stop working. I asked him if there was anything further that we needed to do since we did not want any trouble as far as the students working in other hotels and restaurants. He said as long as the students did not work that would be satisfactory to the union. To date the students are still out of work as far as the Hotel Plankington is concerned. There are possibly several hundred students in the city, whose jobs would be jeopardized if the students at the Hotel Plankington did not withdraw. If practically all of the hotels and restaurants are union, then a larger number would be involved. I tried to reach the managers of several other restaurants to find out what would happen if we would not withdraw our students from the Plankington Hotel. I later talked to one of them, who said they would not care to have trouble with the union over such a situation and would be forced to let the students go rather than to make a stand on the proposition. This was after we had got the students to withdraw.

We have engineering students who continue their studies under the co-operative plan. They work one month in a plant and one month in school.

292 These students also work in union shops. It was the feeling of the University that they were forced to comply with the union request in order not to jeopardize the jobs of the greater number of students. We felt we were being forced to take this action although the University pre-

ferred not to be a party in any way to the strike or have any part in it. It preferred that since the students were performing this work as individuals and although it is true that they probably would not have a job if they were not Marquette University students since the jobs are part time, we still felt that we should not be forced to force them to leave these jobs if they see fit to continue them.

Cross-Examination, by Mr. Goldberg.

293 I knew that the union had a closed shop contract with the hotel, and I received information later by hearsay that the union permitted these boys to work without belonging to the union, and without paying any dues because it was the recommendation of Mr. Goldberg, a Marquette graduate, and the attorney for the unions. I knew that the union did this to help the several hundred students going through school.

294 The university would have preferred if the boys had settled the question direct with the union rather than bring the university into the picture at all. I have never given a great deal of thought to the point whether or not the union is justified on the basis of fair play to have the three boys stop fighting the union in order to continue giving this special privilege to the Marquette students. We have had students working in these restaurants long before there were unions and have continued to work in the various hotels and restaurants for twenty years. They were there before the unions and while the unions were or-

ganizing and are still doing the jobs they did years ago since the unions have been organized. They are simply working for their meals. I don't see anything wrong in their employment there. I think it would be an injustice to have these boys join a union to be able to work there, because they work two or three hours a day and simply get their meals out of it.

295 **KARL WERWATH,**

called as a witness on behalf of the complainant, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am Registrar of the Milwaukee School of Engineering. On or about November 8, 1939, I had a conversation with Phil Valley or some other representative of Local 122.

(At this point Mr. Goldberg offered to stipulate that substantially the same situation exists with regard to the School of Engineering as does with regard to Marquette University in so far as student employment is concerned.)

296 I spoke to Mr. Valley because we were given instructions to see to it that certain of the boys who were working at the Plankinton Hotel would not report back to work. We were given those instructions by a young man who did not identify himself, but stated from what organization he came. He said there were two boys whose names he had that were students at our college who had been working at the Plankinton Hotel. He gave us a dead line as to when these boys would have

to start working. After the conference with the president of the college and myself, I walked out with this young man and wanted to write a report back to the president's office as we do in most any question that comes up pertaining to any particular student. I asked him by what authority he was requesting us to do this and by what authority I could go to these boys, as registrar of the college, and ask them to quit work so forcibly that they would quit work. He said that those were instructions. I asked him to have those instructions written on a paper in the office before 5 o'clock, which was the closing time, so that I could do something about it. Instructions did not
297 come, so I called Mr. Valley. Mr. Valley reiterated the same definite statement as was made by the young man, and further stated that these boys by not stopping working would probably jeopardize their future opportunity for work in any situation where a union might be in control of that work. He said that if these two students would not stop work at the Plankinton Hotel students working in other hotels and restaurants would also be asked to leave their jobs. It is rather hard to say how many other students that would affect since there were certain agreements at these hotels under union contract where students are allowed to work by permission of the union, but not all of the places where these boys worked are places where there are union contracts.

298 There are about 200 students working in hotels in the city.

Cross-Examination, by Mr. Goldberg.

I understand that it is true in a large percentage of cases that the union has a closed shop contract at the hotels in the city which would not permit the students to work at the Plankinton unless they were union members. I know that this privilege has been extended to the School of Engineering and the Marquette University, the Normal School and the Wisconsin Extension to aid the boys and to permit them to go to school.

SAM B. TRAISMAN,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am president of the Business Institute of Milwaukee on the mezzanine floor of the Hotel Plankinton. We have class rooms on the third floor.

299 We have about nine rooms altogether, two of which are on the third floor.

On or about November 13th, I had a telephone conversation with Mr. Goldberg, the attorney for the union. He identified himself and stated that one of the stenographers working in his office who was a student of school could not come to the school any more because she belonged to the union and could not go through the picket line. I stated that I was sorry to hear that, but that I would be glad to send an instructor to her home or to her office to give her whatever instructions she needed.

Mr. Goldberg then said we should do the union a favor by moving out of the Plankinton Hotel. I stated that would be impossible because we had a lease. Mr. Goldberg said to break the lease and that there wasn't a court in town that would sustain the hotel under the conditions. I told Mr. Goldberg that we couldn't think of doing anything like that because it was impracticable and not feasible. Mr. Goldberg agreed by saying that it might be impracticable but he felt we should do it anyway. I didn't mention this to anybody since I intended to forget about it, but
300 the next day the hissing and booing and the insults by the pickets thrown at our teachers during the noon hour when they went out to lunch were so bad that they all came to me about it. Some of the younger students, 17 or 18 years, were booed and hissed for what I don't know. They are students at the school and we have nothing to do with the issues of this strike.

We sustained an inconvenience when a "stink bomb" was thrown in the hotel by somebody on the third floor on a Sunday. The following two or three days the odor that penetrated from the acid in that thing was such that quite a few of our students were nauseated to their stomachs and had to go home.

301 **Cross-Examination**, by Mr. Goldberg.

When you spoke to me, Mr. Goldberg, you told me she couldn't come to class because she couldn't come through the picket line. You also told me that as a member of the Office Workers' Union

she could not go through the picket line. You told me that by continuing on as a tenant we we in effect fighting the union and helping the Plankinton cause. I didn't believe it. You told me that the union would appreciate it if I would move from the Plankinton to some place where there was no union trouble. I then told you that I had a lease.

302 You told me there was legal cause for breaking the lease where you couldn't get your services and your students couldn't get into class because of a strike. I told you that one of the reasons why I didn't want to move was because I was just trying to get established and couldn't afford to spend $10,000.00 to furnish a place and move.

303 When you spoke to me you asked me not to help the hotel cause and defeat the union cause.

Redirect Examination, by Mr. Knoeller.

I wanted to say that I told Mr. Goldberg that we did not care to become involved in the issues of this strike, that we had nothing to do with it. We were running a school, trying to mind our own business.

304 Question by Commissioner Gooding:

The conversations with Mr. Goldberg took place about the 13th of November. Up to that week there had been no hissing or booing at either myself, my students or teachers, but then it was pretty terrible. There had been none prior to the time that Mr. Goldberg talked to me.

Recross-Examination, by Mr. Goldberg.

I was present when the hissing took place.

305 All of my teachers tell me they were hissed and booed plenty. There was nothing like that going on in the first week, but ever since it has been pretty bad. Since the first week I was hissed and I was booed, and a lot of nasty remarks were made. After the first week I am very positive there was hissing. If there was any during the first week I didn't see it or hear it.

Mr. Goldberg: Now, I want the record to show clearly that this time the strike was called November 2nd, and the first week after November 2nd is November 9th, starting November 9th. And I also want the record to be clear at this time that there is no record made of my conversation with Mr. Traisman and a report thereof to the union. Now, the reason I state that, I resent somewhat

306 the inference of the Board in asking about the booing after my conversation, which might raise any implication. There is no such — there shouldn't be any inference or implication.

Mr. Knoeller: Mr. Addis—shall I call my next witness?

Commissioner Gooding: Yes.

CHARLES ADDIS,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Knoeller.

I am a busboy at the Plankinton Hotel. I was present on November 10, 1939, when the hotel had

difficulty in bringing in an ice delivery. At about noon I was requested by Mrs. Hehmeyer to see if I would help the boys to bring some ice in the Michigan street entrance of the Plankinton Hotel. As the boys gathered together and went out there was an awful crowd around the car, and we walked around to the back of the car and from the rear compartment we took these containers out, which was full of cubed ice, and as I pulled one out Jack Heisdorf grabbed ahold of the handle and yanked it out of my hand and spilled the contents over the street, and I immediately went for another can, and he did the same thing to that one, and we just couldn't get any ice in because they spilled every bit that was in there, every can that we pulled out. The delivery men carried in one can of ice before I was out there.

307 Mr. Heisdorf when he grabbed the cans said to me that he thought I was going to stay home and told me that I had better stay in the hotel.

Cross-Examination, by Mr. Goldberg.

I have worked at the hotel about a year and four months. I never belonged to the union. Three days before the strike occurred I was up to the union office and was going to join. Mr. Heisdorf made me go up there because he asked me why I don't belong to the union during the preceding time. I was told by Mrs. Hehmeyer that I must belong to the union and went up to join about three days after she told me.

308 I was a student for a while and did not have to belong to the union. I have been working full

time about a half a year. During that half year I never knew much about the union and didn't know whether we had to belong or anything. No one has told me when I went on full time work that I had to belong to the union.

309 Miss Hehmeyer did tell me to go up to the union at about the time I went up there. I did not graduate, I did not finish school, and I left school in 1938 and have been working at the Plankinton since the fall of 1938, while I was a student at Marquette.

310 **GERALD KLIMEK,**

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a busboy at the Plankinton Hotel. On November 10, 1939, I was one of the boys who went out of the hotel to bring in some ice. I saw Jack Heisdorf at the rear of the car. He was holding back some cans that Jack Addis tried to get out of the rear of the car. I did not notice what happened to the contents of the can.

311 I saw Mr. Heisdorf lay his hands on the cans that Mr. Addis was carrying. I saw Charles Alden have a fight with Mr. Jeske and saw Mr. Alden strike five of six blows in the head and in the chest with a clenched fist.

Cross-Examination, by Mr. Goldberg.

I am single and live at 503 East Juneau avenue and have worked as a busboy since October 2nd at the Plankinton Hotel.

312 During the first four weeks I did not work full time. I am not a student. I am 21 years old. I was hired by Miss Hehmeyer. She did not tell me to belong to the union until Mr. Heisdorf came over and saw me at the hotel during the latter part of the month of October. I heard others tell me that the union would be calling on me to join. Miss Hehmeyer told me about five days before
313 Mr. Heisdorf found me working there. Maybe it was five, six, seven or eight days before; I can't give you the exact date. I don't know when Jack Heisdorf spoke to me. I was in the hotel when Miss Hehmeyer told me to join the union.

314 We were in the coffee shop. She came up and told me I would have to join the union. I was
315 all by myself at that time. This took place about noon. I was hired originally by Miss Hehmeyer. She did not ask me if I was a member of the union and she didn't tell me at that time that I would have to join the union. I don't know whether I took anyone's place when I was hired. I was hired on October 2 or 3. I went in and applied for the job. There was no ad in the paper.
316 Nobody told me there was an opening. I went in myself. This was the first hotel that I had applied to for a job. I asked for Miss Hehmeyer. I asked for who hired the help.

(Discussion between Commissioner Gooding and Attorneys Knoeller and Goldberg with respect to materiality of question relating to witness' prior employment. Objection by Mr. Knoeller to this line of questioning sustained at page 318.)

318 My regular employment is a busboy. I was

never one before. I was a member of a C. C. Camp.

Q. How come you applied for a busboy's job?

319 A. Well, that——

Mr. Knoeller: That's objected to as irrelevant, incompetent and immaterial.

Commissioner Gooding: Sustained. And what is the objection?

The Reporter: "That's objected to as irrelevant, incompetent and immaterial."

Mr. Goldberg: We take exception.

I first spoke to one of the girls in the coffee shop before I spoke to Miss Hehmeyer. I was one of the fellows who came out to get the ice in. There were about three or four others besides myself. I heard Miss Hehmeyer testify that there

320 six or seven. I don't know the exact number. There would be five or six of us. There were a lot of people on the street and there was a large crowd around the automobile. I came out on the Michigan street side through the lobby door. I didn't run; I walked.

321 Some of the other fellows were at the rear of the automobile when I come. I followed Charles Addis. We walked right through; we didn't have to push at all. The crowd permitted us to walk through. There was pushing around the rear of the car. There was a mob there.

322 I walked out through the entrance, faced the car, walked around on my right-hand side of the car at the front end. I didn't see anything at the front end. I did not see Mr. Jeske and Mr. Alden fighting then. I saw them when I returned.

After I saw that there wasn't anything to do with trying to get the ice out of the rear of the car, I saw Alden and Jeske when I started to walk back. When I passed the front of the car for the first time I don't know where they were.

322 While I was walking towards the rear of the car I saw Mr. Jeske dragging a can of ice into the hotel.

323 Commissioner Gooding (Q.): Did you see Jeske carrying a can, or didn't you?

A. No.

Mr. Goldberg: That's all.

Redirect Examination, by Mr. Knoeller.

Q. Did you see Mr. Jeske dragging a can?

A. Yes.

Mr. Goldberg: Just a minute. Just a minute. Mr. Valley just says that as I was asking questions of this man this Mr. Charlie Addis was indicating answers to this witness.

Mr. Knoeller: I will put Mr. Addis on the stand and take care of that. That's all, Mr. Klimek. Take the witness stand.

CHARLES ADDIS,

recalled as a witness on behalf of the complainant, having been previously sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

324 I have not been telegraphing answers to Mr. Klimek, who was just on the witness stand, by nodding my head and telling him what to say. When I went out of the hotel entrance to go to

the car, the only trouble I had was that there was such a crowd around the left of the car that I had to go around the front of the car. I did not see any of the pickets thrown to the ground.

RUBY VAN,

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is Ruby Van, I am single and a member of the union.

325 I worked at the Hotel Plankinton for five years before the strike. While I was sitting back of Mr. Addis he would bow his head or shake his head indicating either yes or no answers.

Cross-Examination, by Mr. Knoeller.

I am out on strike and a member of Local 122. I was sitting directly behind Mr. Addis. I could not see his face.

326 **ELIZABETH MINOR,**

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is Mrs. Elizabeth Minor. I am a striking employee of the Plankinton Hotel. I have worked there for three years. I was sitting directly behind Mr. Addis while Mr. Gerald Klimek was being questioned. I saw Mr. Addis

shake his head when Mr. Goldberg questioned him and when he saw him stopping he would nod or shake his head.

327 **ALFONSO GAMBY,**

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

I am the president of Local 122. I was sitting two rows behind Mr. Addis while Mr. Klimek was being examined. The girl called my attention to the fact that Mr. Addis was shaking his head both up and down and sideways. I stood up to see if he was moving his hands. He had them in a folded position. He shook his head, indicating a yes answer by up and down movement and a no answer by shaking from side to side.

328 **Cross-Examination**, by Mr. Knoeller.

I was two rows behind Mr. Addis. The row in front of me was occupied. I was standing up.

GERALD KLIMEK,

recalled as a witness on behalf of the complainant, having been previously duly sworn, on oath was examined and testified further as follows:

Direct Examination (continued)
by Mr. Knoeller.

I never had any signals given to me by Mr. Addis at all.

PAUL ZIEBELL,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

329 I am a bellboy at the Plankinton Hotel, and became such on November 2nd, the day the strike started.

On November 7th, about 10 o'clock in the morning, I had taken two sample cases from a guests' room to be given to a taxi driver for shipment via the Railway Express. I set the grips down inside the vestibule on the Plankinton street side of the hotel and spoke to a cab driver, who was not certain what the fare was to the express office. He said he would find out. In the meantime I stood there in the doorway with the door open and had my arm on the door.

330 The pickets were marching out in front, carrying signs. James O'Brien began saying nasty remarks, as he always did, calling me all kinds of vile names. I told him to keep still and to mind his own business. I noticed that he gave a sign to the picket in front of him, and they came walking over to the doorway, and I stood there, and I glanced around a bit, and before I knew it he hit me in the neck with his fist. Before that he had been parading with the pickets directly in front of the hotel. He called me a bastard and a pimp, and all other kinds of names. After he called me names he handed the sign to the picket in front of him, came walking up, glanced around

bit, and then struck one blow in the right side of my neck.

331 To protect myself, voluntarily I let my left hand go out and I hit him once. That was all that happened. Before I knew it, the policeman was there and he was taking him away. I was sitting directly beside Charles Addis when Mr. Klimek was testifying and did not observe him telegraphing any signals whatsoever to Mr. Klimek.

Cross-Examination, by Mr. Golderg.

I was a bell man at the Plankinton since November 2nd. I don't know if I was a member of the union or not; they suspended me so many times.

332 I was suspended for not paying dues. I don't know whether I was a member in good standing on November 2nd. The hotel did not ask me when they hired me. They asked me if I was a member of the union, but did not ask if I was a member in good standing.

On November 7th I motioned to the taxi driver to take two sample cases to the express office to be shipped to New York. I don't know where the salesman was from. I don't know how long he had been at the hotel and I don't know his name.

333 He was checking out of the hotel at that time.

BERTHA ALTMAN,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am the public stenographer at the Plankinton Hotel. I saw the altercation between Mr. Ziebell and Mr. O'Brien on November 7, 1939, at about 10 o'clock in the morning. I was standing near the porter's desk and looked towards the east entrance. This is about twenty-five or thirty feet from where I was.

334 I saw Paul, the bellboy, standing at the outside partly-opened door, and saw one of the pickets, James O'Brien, come up and strike him. Then Paul ran out after him and struck him, throwing him down. Then Lester, one of the other bellboys, came out to help Paul, and they held the picket until the policeman came.

Paul was inside the hotel, behind the doors, when Mr. O'Brien came up to him. I was sitting directly beside Mr. Addis, to his right, at the time Gerald Klimek was testifying and did not see Mr. Addis telegraphing any signals to Mr. Klimek upon the witness stand.

Cross-Examination, by Mr. Goldberg.

I was standing in the inner lobby, near the porter's desk, opposite the elevators.

335 I would say this was twenty-five or thirty feet away from the first east door. First there are revolving doors, then an inner lobby, and then

another set of doors. Mr. Ziebell was between the revolving doors and the outer set of doors. I did not hear any conversation that went on between them.

LESTER RAASCH,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a bellman at the Plankinton Hotel, and I witnessed the encounter between Mr. O'Brien and Mr. Ziebell on November 7, 1939.

336 This happened about 10:30. I was standing at the east end of the front desk. I was about fifty or sixty feet from the outer doors of the east entrance of the Plankinton Hotel, but I had a very clear vision through the glass in both doors. While I was looking around I looked out the east entrance and saw Paul Ziebell standing in the vestibule with those two grips. Then I saw him motion and a taxicab driver came over, and he talked to the taxicab driver for a little while and the taxicab driver went away. I don't know what it was about. Paul opened the outer door of the vestibule a little ways and leaned his arm against the silver bar. He was still inside the vestibule. At that time I noticed James O'Brien in the picket line carrying a sign. As he came around in a circle closer towards Paul he made a motion at him with his fist. When he did that I walked over to the vestibule doors there,

because I had known that he was kind of nasty. The night before he had spit on me when I was holding the doors open for the engineers to come
337 in. He did this while he was on picket duty. Before that, while I had been loading baggage at the rear entrance, he told me that if I came outside he would beat me up. When I saw him threaten Paul I thought something was going to come up, so I went over there. I was about ten feet from Paul, but couldn't hear anything, because the doors were shut. O'Brien walked around again in this circle, and when I got close to Paul he handed his sign to the fellow in front of him and walked up to Paul, looked around a little bit, swung out with his left hand and hit Paul in the neck. Paul opened the door wider and swung back and knocked him down. O'Brien used his clenched fist. After Paul knocked him down he started to get up. I rushed out and tried to hold him down, and he tore the lapel of my bellboy uniform. By that time the policeman came and took him away.

338 I also had an encounter with Charles McLaughlin about 11:30 one morning; I don't remember the exact date, but it was about a week and a half or two weeks after the fight between Paul Ziebell and O'Brien. While I was on duty somebody asked me to come outside and help him. I told him that he was not allowed to do so, because Mr. Wood had given definite orders not to go outside, because he didn't want any violence to occur, but if the guests absolutely demanded it, we should keep quiet and not answer back. So I

went outside with this gentleman, who had a Ford coupe, and I walked towards the rear of the car. When he opened it up I saw that there was
339 salt in there. The salt was for the hotel. There were five or six bags of about 100 pounds each. I grabbed one of the bags and started towards the door. The women pickets in the line, two of whom I recognized as former employees, started crowding around me and pulling at the salt, kicking me and calling for help. Before I got half way to the door Charles McLaughlin and several other men came running and started hitting me with his first. He struck me three or four times in the face. By that time the policeman got hold of me and I brought the salt in and went back and got one more. Mr. Wood said I shouldn't go out any more. About three minutes after that occurred the sergeant of police told me that they had arrested McLaughlin and wanted me to come down to court with him. Both of my arms were occupied when I carried this salt.

340 Mr. McLaughlin came from the side. I don't know if he said anything to me at all. There was so much noise going on. When the policeman grabbed him, the policeman said, "You can't do this." Mr. McLaughlin said that I can't get this bag of salt in there, either.

Cross-Examination, by Mr. Goldberg.

When I came out for the salt I did not throw over any of the lady pickets in the line. I did not know some of the girls were thrown to the floor.

I was the only bellboy who came out, and if the lady pickets were thrown I don't know who did it. I know that in my last hearing at Judge Neelen's court, counsel for the union tried to bring that point out, too, and the girls testified that I threw one or two of them to the floor, but I don't remember doing it. Mr. McLaughlin said in court that the reason he had that controversy with me was because I threw those girls down.

341 I went to work for the Plankinton the second day after the strike occurred. They asked me if I was a member in good standing in the union, but I said, "No." I am still working at the Plankinton as a bellboy.

342 **HARVEY WEBER,**

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a steward at the Plankinton House. On November 5th I and Mr. Hundt tried to make a delivery of clean wash by automobile from the Plankinton House to the Kilbourn Hotel at about 2:30 in the afternoon. We were at the receiving entrance on the west of the building.

343 There were only two pickets at that door. As I walked outside four or five or six men came from across Michigan street, got into the picket line, and started parading around in the line, so that it was impossible for us to drive a car up there. Mr. Hoffman decided that we would abandon it

and wouldn't go through with it. While they were parading back and forth they saw James Myrick inside the building. They started to holler at him; called him a scab, a dirty rat, and told him they would get him later. At the time that we attempted to make the delivery there were about
344 ten or twelve pickets there. They were about two feet or so from the building. One of them jumped on the other steps, looked into the window, and saw James Myrick and hollered at him.

On November 4, 1939, a salesman from the Automotive Electric Association attempted to deliver some displays and samples at the receiving entrance. There were about ten pickets at that time. The two salesmen wanted to unload their samples and place cards. Mr. Valley told them that they had no right to bring that stuff in because there was a picket line and nothing was supposed to be brought into the building. The officer told them that he had a right to bring that in. He told the officer that he didn't have any authority from Captain Polcyn.

345 When he said that I stepped up and said that he had authority from Captain Polcyn, because I talked to Captain Polcyn myself, and Captain Polcyn said we could bring anything into the building or anything out of the building that we wished; that there was nothing to stop them from unloading or receiving. Mr. Valley talked with the gentlemen and asked them whether that was union made stuff and whether they were union. They said they were not. I asked the men to let me have the packages. Mr. Valley turned as I

had my hand out to take the packages and pushed my hand away. He stared at me for a minute and took off his glasses and said, "If you fellows want to get tough, we'll get tougher." The salesmen put their things back in the car and Mr. Valley walked away. Heisdorf then told me that I had better lock up the doors and bar them, because I wasn't going to get anything in or out of that building.

I had a conversation with Mr. McLaughlin on November 13, 1939, while we were unloading some
346 paper, and we told a junk dealer he could have the paper if he took it away. It was just bales of waste paper. McLaughlin talked to the truck driver ten or fifteen minutes. The man then said that he wouldn't haul it because they might make trouble, and he didn't want to get into trouble. He said that for the little bit he could get for the paper it wouldn't pay for him to haul it. As I was going to pull the bale away from the door so
347 I could lock the door, McLaughlin hollered at me and made vile statements. I didn't pay any attention to him. He called me a rat and a fink.

Cross-Examination, by Mr. Goldberg.

I don't know what a fink is. I don't know that it is the name given to a fellow who doesn't go out on strike and works at a strike-bound place. I have worked at the Plankinton for two and one-half years as a steward, but am not a member of the union.

348 I was not advised by Mr. Wood, or anyone else in authority, that I have to belong to the union.

I was never told that the contract provided that the inside day steward, the inside night steward, the storeroom man, the assistant storeroom man and storeroom sorters were required to belong to the union. Neither Mr. Wood nor anybody else in authority at the Plankinton told me that I had to belong to the union.

349 In a conversation in the court room corridor on December 1st I did not say that Mr. Valley did not touch me. I said that he pushed my hand.

I never told Mr. Knoeller, Mr. Richardson, Mr. Robertson or Mr. Wood that Phil Valley battered me and assaulted me. I don't know why that is in the complaint.

350 I am also the purchasing agent at the Plankinton Hotel.

JAMES MYRICK,

called as a witness on behalf of the complainant, and being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a busboy at the Plankinton Hotel. At about 6 o'clock on the evening of November 6, 1939, three or four large bus loads of Purdue engineering students came to the hotel. While I was hold-
351 ing the south door open for them to enter on the Michigan street side, James O'Brien, a picket, passed close to the door and spit in my face. I reported this incident to the officers and questioned O'Brien, O'Brien telling them that they could not prove it. I was present on November 5, 1939, when Mr. Weber and Mr. Hoffman attempted

to make a delivery of wash from the Plankinton Hotel to the Kilbourn Hotel. I went downstairs and brought up the baskets in the elevator and put them inside the receiving entrance to put into the car when the time should come. There were only one or two pickets there when we started out, and when Harvey and Mr. Hoffman walked outside then about six or seven men came across from the south side of Michigan street, started picketing around the rear door about a foot or so away from the building. They were all trying to see what we were doing on the inside. They were yelling and shouting on the outside. Mr. Hoffman said we should give up the idea and wait for a better time to move it.

Charles McLaughlin spoke to me. He jumped
352 upon the stoop and looked at me, calling me a dirty rat and scab, and stated that he would see me later.

Cross-Examination, by Mr. Goldberg.

Mr. McLaughlin said, "I will see you later and we will get you later." He spoke to me for quite a while. This happened on Sunday, November 5th, and although this is December 11th, nothing has been done to me during this time except that once they tried to stop me from coming in on the Plankinton street entrance. Nobody has hit me. One or two of them have offered to fight with me a couple of times. I did not take up the offer and nothing was done.

353 I worked at the Plankinton before the strike in the capacity of busboy. I am a member of the

union, but am behind in my dues, but they still let me work. My mother is out on strike at the Wisconsin Hotel. She tried to call me out, but I stayed at the Plankinton.

THOMAS JAMES,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a laundry man at the Plankinton Hotel. When I just got back to work on November 17th,
354 I was a helper. Late in the afternoon of that day, I had some trouble with a man named Larry C. McAllen. About 3:30 or 4 o'clock I left the hotel on the Michigan street entrance to go to the hospital to see my wife. I walked east on Michigan street as far as Plankinton avenue and walked north on Plankinton when Larry McAllen came up from behind and grabbed me and put
355 me down on the sidewalk and started hitting me in the jaw. He had his feet on my arms and had my arms pinned with his knees so I couldn't move. He had his hands closed and hit me on both jaws. He struck me quite a few times before the officer got there. This happened on the sidewalk in front of one of the shops in the hotel. I have seen a doctor with respect to my injuries, who has taken X-rays. It is badly bruised. I am still under a doctor's care. Mr. McAllen while he was striking me claimed that I stepped on his feet. He told me later and also said in court

that he had been talking to me for ten minutes before he hit me and that I had stepped on his feet.

356 On Wednesday, December 6th, when he was convicted he again said that I spoke to him ten minutes before he hit me. He was found guilty. I don't remember his saying anything at the time he struck me.

Cross-Examination, by Mr. Goldberg.

Mr. McAllen says that he and I had a controversy ten minutes before this happened and claims that I stepped on his toes. I didn't see him as I passed by. I know I didn't bump into anybody walking up the street.

357 I didn't see him before. I was in the picket line for one week and was removed from the picket line because I was drunk one night.

Redirect Examination, by Mr. Knoeller.

I did not step on Mr. McAllen's toes. He was not in the line while I was out.

EDWARD KNOPF,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a bell man at the Plankinton House, and was such on Tuesday, November 14th.

358 On that date I had an altercation with one of the pickets. I intended to take my car and to

drive one of the other bellboys to see his mother. As I stepped out of the east door on Michigan street and turned around to go north to get my car, one of the pickets, Tommy O'Mahar, kicked me in the back of the knees. The policeman had hold of him and asked him why he kicked me. I told the policeman that I worked at the hotel and asked that O'Mahar be arrested. They took him to the station house and I swore out the warrant. A few days later I saw him again and he told me to come outside after hours and he would take care of me. He said he wanted to get hold of me and raised his fist.

Cross-Examination, by Mr. Goldberg.

O'Mahar and myself had personal controversies that date back three or four weeks before the strike.

359 Neither he nor I were fired because we refused to work with each other. I did not try to get him laid off or fired, but I did refuse to work with him. At this time, O'Mahar was a bellboy. I don't know whether he was put on elevator service because of my refusal to work with him, but I refused to work with him the rest of that day because he hit me on the chin. This had nothing to do with the strike.

360 After this controversy and my refusal to work with him, he became an elevator operator, although at the time we had our controversy he was a bellman.

ELMER HUNDT,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am the superviser of the Plankinton Hotel parking lot, which adjoins the Plankinton House. On November 9, 1939, while I was walking east on Michigan street, I passed Tommy O'Mahar and said "Hello" to him.

361 He said "Hello, you bastard," and told me he never did like me. I walked over to him and asked him if he meant me and put my hand on the side of his coat lapel. He lost his balance and went into the curb. I asked him if he really meant me, and he said "Well," and then the union assistant who was with him stepped in and said that O'Mahar was telling him a story. I told him that when you are telling a man a story and call him a name like that you should look a man in the face when you talk and not the pedestrian on the street. I haven't had any trouble on the parking lot during the strike. I found fifty shingle nails on my lot, but I don't recall the exact date. I showed them in the office and they made a memorandum of it. This was a week and a half to two weeks ago. The nails were found on three different days. There was a total of about fifty. After I cleaned them up one day there were nails the following day.

(Counsel for the union objected to the testimony and introduction of Exhibit No. 20, being

some of the nails purportedly picked up at the parking station referred to, for the reason that there was no connection between such evidence and the respondents or any issue in the case. Exhibit 20 was marked by the reporter and received by the Board subject to the objection.)

363 **Cross-Examination**, by Mr. Goldberg.

I do not know whether Mr. Robertson, one of the attorneys for the hotel, Mr. Richardson, president of the Hotel Company, or Mr. Knoeller, put those nails on the parking lot in order to get the union into bad light. I don't know whether Mr. Fuldner, who was in the contracting business and may have access to nails, left those on the lot. I know who put the nails there. I have been watching the lot. There were ten pickets walking in the alley, and I picked the nails up at 9:30 one morning and 3 o'clock in the afternoon. There were some more tacks that an officer
364 picked up off that same part of the lot next to where the pickets were walking. I did not see who put them there.

We have chased some of the pickets off our lots carrying signs. Actually I don't know who left them there.

Mr. Goldberg: We again renew our objection, and ask that it—renew our objection and ask that that testimony in regard to those nails be stricken, and that my motion objecting to the acceptance of the receipt of those nails as an exhibit be granted.

Mr. Knoeller: I think counsel himself has identified the nails right near the pickets.

Commissioner Gooding: We'll rule on it at the conclusion of the testimony.

365 **FRED LANGDON,**

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Knoeller.

I am a valet at the Plankinton House. On the evening of November 11, 1939, I stopped in at the "Big Stein," a tavern next door to the hotel, for a couple of glasses of beer. Two gentlemen came in and sat down at a table not far from me. When they saw I was alone they came over to where I was. One fellow told me that he understood I was working in the laundry. I told him that I wasn't. He stated that he knew what all of us were doing there and that they knew I was working in the laundry. The other fellow started to talk to me while he was standing on the side of me. While I turned to look at him the other boy slugged me and hit me on the chin or right on the cheek.

366 I was facing north and the other boy was on the east side of me, and as I turned to face him the other fellow slugged me on the left side of the face.

The tavern does not belong to the hotel. It is in a different building, next door to the hotel.

He said, "Let that be a lesson to you," and both of them walked away out of the back door. He hit me with his clenched fist. They did not call me any names. I was wearing glasses and

I am a cripple in that my left arm is stiff since I was 10 years old. I can raise it, but I can't bend the elbow. I did not strike back at these men.

Cross-Examination, by Mr. Goldberg.

I was a member of the A. F. of L., Union Local
367 122, and was at the time the strike began. I did not go out on the picket line, but kept on doing my regular, normal work. The hotel has a laundry, the employees of which belong to the Laundry Workers Union. As a valet I don't do laundry work any time of the year.

368 **RUDOLPH STANO,**

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I was bellman at the Plankinton House on November 17, 1939.

I had trouble with Joseph Hofich, captain of the pickets, at about 3:30 in the afternoon, but I can't remember the date. One of the guests, who was parked out in front of the hotel in the loading zone and had a couple of pictures wrapped up, asked me to take two of the pictures to the car and he would take in the other one. I took the pictures and waited until all the pickets got on one side of the sidewalk, at the end where they usually turn, and took the pictures out to the car. As I got finished putting the pic-

tures in, Mr. Hofich jumped on my back and started slugging me with his clenched fist.

369 I had not said anything to Mr. Hofich or to any of the pickets at that time. Mr. Hofich said, "You bellboys think you are pretty smart, don't you?" I didn't answer his question. I was in District Court on Wednesday, the 7th, at which time Hofich was found guilty.

Cross-Examination, by Mr. Goldberg.

I did not call Hofich names and I didn't swear before some of the lady pickets. The officer was closer to me than the lady pickets were, and the officer didn't hear me say a word. I started to work at the hotel last March. I was a member of the union at the time I went to work. At the

370 time of the strike I was a member in good standing.

WARD WHITNEY,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a busboy at the Plankinton House.

On Saturday, November 18, 1939, at about 4:30 in the afternoon, I left the hotel. As I got in front of the Big Stein Tavern, which is right next to the hotel, one of the pickets jumped on my back and said, "So you work at a scab hotel, do you?" I didn't say anything to him. He tangled with me there for a minute and struck

several blows. I returned some. A policeman came and this fellow started running up the alley aside of the Plankinton Arcade.

On my way home I got off a street car on the corner of Eleventh and Wisconsin and started walking west on the avenue on the north side of the street. I met two fellows. One of them
371 asked me if I still worked at the hotel. I said, "Yes." He said, "Now you're going to get it." Then he doubled up his fist and hit me and the other fellow jumped on my back. I knocked the first fellow down and succeeded in throwing the other fellow onto the sidewalk. Then I ran right home. The first fellow who struck me used his clenched fist and struck me four or five times in the face and chest. The fellow who attacked me on Eleventh and Wisconsin used his clenched fist and struck me in the chest.

Cross-Examination, by Mr. Goldberg.

There were no arrests in either incident. I never saw either of the men before in my life. They evidently knew me and called me by name.
372 There are no witnesses that I know of who saw it. This happened about 5 o'clock in the afternoon.

Redirect Examination, by Mr. Knoeller.

I did not stand around to take the names of witnesses. I didn't stop for anything. I don't know how many men were around there, if there were any more around there. I went right home.

Cross-Examination (Continued),
by Mr. Goldberg.

I worked at the Plankinton since November, 1935. I was a member of the union until this strike was called.

373 I did not go out on strike.

Questioned by Commissioner Green:

I did not see this person who attacked me at the hotel as I came out. I heard him running, and as I started to glance he grabbed me by the shoulders and turned me around.

VINCENT STAFFARONI,

called as a witness on behalf of the complainant, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am a porter at the Plankinton House.

374 I saw Mr. Ward Whitney leave the hotel on November 18, 1939, at about 4:30 o'clock in the afternoon. I was eight or ten feet behind him when I saw a fellow leave the picket line and kind of trot behind him a little. While the officer was looking the opposite way the picket turned Whitney around and was swinging at him. I informed the officer that one of the employees was getting hit by a picket. I saw the picket strike four or five or maybe six blows. Whitney had his coat down by his arms and couldn't do anything. I saw him duck around. I was right out in front of the hotel at the time, about twenty feet away.

375 When the officer came rushing up to the scene

of the encounter the picket ran away through the alley toward Second street.

Cross-Examination, by Mr. Goldberg.

I was a member of the union before the strike and went out on strike for about a week. I did not go back because Mr. Wood gave me $35.00 to pay for furniture. He didn't give me any money. I never told any pickets that. That is not why I went back to work.

376 **PHIL VALLEY,**

recalled adversely as a witness of the complainant, being previously duly sworn, on oath was examined and testified as follows:

Direct Examination, by Mr. Knoeller.

Before I pulled the strike on November 2, 1939, I did not contact the other unions and solicit their support.

(It was stipulated by Mr. Goldberg "that the other unions refused to go through a picket line and aren't working. I will stipulate that, but not that there is a sympathetic strike.")

377 I did not contact some of the business agents of the other unions before the strike. I did talk to them immediately after the strike. They did not tell me that they would order their members to cease work, just that their people are not allowed to go through the picket line and that they would not permit them to go through a picket line. The Laundry Workers and other

unions also picketed at the hotel and carried the signs of the other unions, together with the Local 122 sign. They are still picketing today. The local joint executive board ordered Mr. Burgarino of the Bartenders' Union to order all of the bartenders to walk out on strike.

378 The local joint executive board is composed of Local 405, Local 64 and Local 122. It was the supreme court for all the three locals in Milwaukee. They ordered the other unions to go out on strike.

I did not tell the laundry men and all the others to walk out. I told the bellboys and the people in the lobby that were my people that a strike was called. I told one girl in the coffee shop. There was only one there. I did not go into the kitchen. I believe the dining room was empty except for three boys gathering some dishes, who told me that they were not going out on strike. I told them that they were making a mistake staying in if they belonged to the union.

379 I told the bellboys that the strike was called; in fact, they were waiting for it. Somebody else told the maids. They said they wanted to see me to find out if it was right. I told them that everybody should go out because there was a strike.

HIRAM WOOD,

called as a witness on behalf of the complainant, having been first duly sworn, on oath testified as follows:

380 **Direct Examination,** by Mr. Knoelier.

My name is Hiram O. Wood. I am manager of the Plankinton House. On November 2, 1939, I met

Mr. Phil Valley, who came in to announce a strike to the employees. We talked together later that day. Either he or his employees went to every department in the house that was working at the time—laundry, housekeeping department, front office, kitchen and maids. At that time we were oversold. The house was full of school teachers particularly, who were here in a convention. I heard later that somebody at the Engineers Union had phoned them to leave the house.

381 I spoke to Frank Burgarino of the bartenders the next day, who insisted that the bar be closed. He stated it was very embarrassing for him for the bar to remain open when the hotel was on strike. The strike was called at about 4 o'clock in the afternoon and a picket line of forty-five or fifty was formed immediately afterwards. The Plankinton avenue and Michigan street entrances, and the receiving entrance in the alley to the west were picketed and are still being picketed. I have seen Building Trades, Laundry Workers and Hotel Employes using signs.

382 I don't recall seeing an Engineers sign.

I held a meeting on November 1st after the arbitration award had been signed, in one of the large meeting rooms at the Plankinton House. There were present as many of the employees as we could summon from their work. I read them a letter and tried to explain it to them with some care that we were mailing that night to advise them of the situation. I wanted them to know that we were agreeable to accepting the award of the arbitration board.

(Exhibit 21 marked for identification is a true and correct copy of a letter which was read to the employees at that meeting and was received into evidence.)

383 On November 3rd, the day after the strike, approximately half of the workers had returned. Many more had returned since. I have prepared a list showing the number that have returned to work. I was present on November 10, 1939, when an attempt was made to deliver ice at the hotel. I saw eight or nine busboys or perhaps six or seven leave the hotel in uniform and followed them to the door and saw an ice delivery about to be made. By the time I got there one of the cans of ice had been tipped over and our ex-doorman, Charles Alden, was strenuously pummeling one of
384 the boys. One of the union fellows was tipping over another container of ice cubes. I saw John Heisdorf, who was right back of Alden, and a young fellow tipping over a garbage can of ice cubes. I saw Mr. Heisdorf himself lay hands on the cans of ice and tip the ice.

On Sunday, November 9th or November 19th I found a stench bomb in the hotel.

Mr. Goldberg: I object to this testimony unless it will be in some way connected, Mr. Commissioner. Same objection as to the previous reference to the stench bomb.

Commissioner Gooding: Well, unless it is in some way connected it, of course, won't be considered in arriving at a conclusion.

I found an odor in the lobby of the hotel about 10 o'clock in the morning and searched the origin

of it, and finally found that stench liquid had been pretty generously distributed on the third floor, and in searching around for the container found a quart bottle about half full of the same stuff under
385 a couch at the elevator landing. The odor is still there at the present time. The hallway on the third floor is carpeted and is about eighty feet long. This liquid was spilled along thirty feet of the hallway immediately adjacent to some of the dining rooms.

On November 26, 1939, the north window on the rear elevator landing on the main floor was broken.

(Exhibits Nos. 22 and 23 were identified as being pictures of the broken window and pane and were received into evidence.)

386 Mr. Goldberg: We object to the receipt of the same.

Commissioner Gooding: Go ahead.

Mr. Goldberg: On the same—for the same reasons as we objected to the other testimony. There is no connection between the breaking of these windows and the issues presented at this hearing.

Commissioner Gooding: Well, there isn't up to the present time, but there may be; I don't know.

Mr. Goldberg: Well, if there is no further connection, I move now that as soon as their case is through it will be stricken.

Commissioner Gooding: They will be received at this time subject to the objection.

Examination of Mr. Wood (resumed).

The picketing has been very unpleasant, and jeers.

387 One of the pickets spit on me one night. It didn't hurt me any, but I saw it or felt it. I am not offended, however, about it. I heard pickets call, boo, hiss and sneer at guests all day and all night from my office. They are boisterous in the sense that they are jeering and hooting. I received reports of the violence that was committed against some of the employees and in regard to the eating of peanuts in front of the hotel. The pickets eat peanuts and throw the shucks at the entrance. We have had several complaints from the guests that we ought to clean it up. We do it, but it occurs again right away. It is rather a hopeless task.

388 I saw pickets carrying sticks or clubs in their hands in front of the hotel only once. There is yelling and hooting, and the arrival of every cab calls for the announcement that they should go to the Schroeder or some other place.

Out of 188 employees we have about 148 returned to work.

Question by Commissioner Gooding:

Q. By 148 returned to work, you mean 148 of your former employees returned to work?

A. Yes, sir.

Examination (resumed), by Mr. Knoeller.

Outside of Mr. Alden and Mr. Tom O'Mahar, none of the others who committed acts of violence are former employees of the hotel. The hotel is now operating.

389 **Cross-Examination**, by Mr. Goldberg.

I have a list of our 188 employees and those who have gone back to work.

(List marked "Respondent's Exhibit No. 24.")

Respondent's Exhibit No. 24 is a list of employees, showing the dates when they were engaged and when they left. It consists of six typewritten sheeets, showing the employees as of date of June 16, 1938, their date of employment, their date of leaving, the employees as of December 1st, the date they were employed and those out on strike.

390 According to this exhibit, the hotel has 188 employees, 148 of whom are back at work. The day the strike was called Mr. Valley had conferred with me with regard to signing the supplemental contract that the majority of the hotels signed. He also conferred with me on the preceding day. The strike was not called until after I told him to contact Mr. Robertson to determine whether or not a contract would be signed. I don't recall when I learned that Mr. Robertson told him that the hotel would not sign the contract, and that if the union wanted to call a strike, it was up to them. Mr. Valley told me that if there is any possible way of signing the contract, he would prefer to have me sign than to subject the hotel to a strike.

391 I had no authority to sign the contract, however. Mr. Valley told me that the orders had been that a strike should be called at the Plankinton House the day before, but that he carried it along two days and tried to get us to sign so that he

wouldn't have to call a strike. When I called the employees together in room 312, I knew that under the contract of June 16, 1938, the union was the bargaining agent for the employees.

392 The purpose of the meeting was not to prevent them from going out on strike, but to acquaint them with the situation, because they were entitled to know about it. I did not think that I ought to tell them to go to the union to find out what had happened. The strike was not discussed at all at that meeting. The purpose was to read to them this letter which was going in the mail, and explain it to them. I wanted them to know about it earlier than the following day, when the letter would be received by them. I also read the arbitration award over the telephone to you, and they heard me read it. I did not read it to them. I read only the letter.

393 Mr. Hoffman and Mr. McCarthy of the Kilbourn Hotel were also present at this meeting. They are the managers of that hotel. The Kilbourn employees were not available. It was my intention to have the manager of the Kilbourn Hotel read the same letter to the Kilbourn employees.

394 I did not read the contract to the employees. I notified the employees that the hotel was willing to sign the award of arbitration.

395 The contract was not mentioned at the meeting, to the best of my memory. I read the letter and explained each paragraph to them. I see now that the letter refers to the contract, so I did discuss the proposed contract. I did not know that when we are discussing a contract you must dis-

cuss it with the bargaining representatives and not the employees. I didn't give that one thought. I didn't think that we would be interested with the rights of the employees to designate bargaining representatives to act for them.

396 It is not true that we claimed we could not sign a closed shop contract with the union because the law didn't permit us to violate the rights of the employees. We refused to continue the closed shop contract because of the arbitration award. I do not know that their bargaining representative stated the only reason our hotels and the other hotels refused to sign a closed shop contract was because under the law they couldn't do so. We didn't care to sign a contract without arbitration.

397 I know that we had several conferences with respect to signing a contract before the arbitration. I know before the suggestion of arbitration that the union elected to continue the old contract, but asked for certain changes. We had received such letter from the union. I know that the union presented certain demands.

398– (Discussion between counsel and Commissioner
399 Gooding with respect to materiality of questions going to witness' familiarity with negotiations prior to arbitration.)

400 I knew that for all practical purposes the union had trimmed its demands to merely one week's vacation with pay.

401 I do not remember saying to Mr. Valley that the vacation with pay article didn't bother us very much because most of our employees were

getting vacations with pay anyway. It is not true that half of our employees were already getting vacations with pay. I don't know how many employees were receiving vacations with pay. There were quite a few but just exactly how many I wouldn't be able to guess.

Q. Now, Mr. Wood, your guests are given access to go into the hotel? They go in, don't they?

A. Yes, we are open.

Q. The hotel—the guests—scratch that. The pickets do not block their entrance and prevent them from going in?

A. No.

Q. What they are trying to do is to induce them not to patronize your hotel, isn't that right?

A. Well, that is pretty well qualified, but that is correct, yes.

402 I didn't expect that the union would try to induce the people not to patronize us in the manner they done, not by calling everybody a scab and spitting at them, and do these different things that have been reported to me. I saw no instances of spitting, except the one instance to myself but there were many reported to me.

Mr. Goldberg: "Well, I will say this for the record, for the union officials, and for myself, we don't countenance it, and there is going to be same pretty severe instructions, if that has taken place."

Examination resumed, by Mr. Goldberg:

I do not know the name of the party who spit at me.

403 I did not tell my employees not to go on strike.

After Mr. Valley left, I remember asking some of them if they were all going to desert us, or if some of them were going to stay. I didn't try to prevent anybody leaving the hotel that wanted to go. I didn't go downstairs with Mr. Valley for the purpose of preventing the girls from going out on strike, but to view the procession, as it were.

Complainants rest

404-428 **HIRAM WOOD,**

called as a witness adversely on behalf of the respondent, being previously duly sworn, was examined and testified as follows:

(This testimony is omitted because it deals with the question of interstate commerce. That issue has been abandoned by the petitioners for the purpose of this appeal.)

429-465 (This testimony omitted, since it relates to the application of the independent union for an election and certification, which is not a factual issue on this appeal.)

465-495 (Testimony omitted because it deals with the question of interstate commerce, which issue is abandoned for the purpose of this appeal.)

495-497 (Testimony omitted because it relates to the petition of the independent union.)

499 **Hiram O. Wood** testimony (resumed):

Adverse Examination, by Mr. Goldberg.

I recognize Exhibit No. 10, which is a copy of a letter under date of November 1st sent to Mr.

Goldberg, the original of which I signed. I note that by the last paragraph in that letter I advised Mr. Goldberg that the arbitration decision has no bearing upon the relationship between the Plankinton and Kilbourn Hotels and Local 64, Bartenders International League of America; Local 311, International Union of Operating Engineers, and the Milwaukee Building Trades Council.

500 We did not convey that information to the representatives of the independent union when they requested a unit covering the employees within the jurisdiction of those three unions. We have never received a notice from Local 122 terminating the contract, nor did we ever send a notice to Local 122 indicating our election to terminate the contract. Likewise, we did not receive any such notice from Local 174, Laundry Workers, nor did we send them one.

501-505 (Omitted, since it bears upon questions relating to the independent union.)

506 After the 1937 contract was signed, I do not remember advising any dining room employees, particularly the waitresses, that they did not have to join the union.

507 To the best of my memory, I only explained the contract to occasional people that asked me what was required under its terms. I did that to the best of my ability. I might add that the contract, after being signed, was sent to the department heads of the hotel so that each and every one had access to it and read it for themselves.

I do not believe that I instructed Mrs. Peggy

Helmeyer to advise the waitresses that under the signed contract they didn't have to join the union, I do not know whether she did that. I do not believe that any such notice was posted on the bulletin board of the hotel where the employees could see it; I don't remember.

508 When the modified closed shop contract went into effect the waitresses were not given a raise. That was not required by the contract.

509 I know George Bournak, who was formerly associated with Local 122. I do not have any personal dislike for Mr. Phil Valley.

Q. Now, did you or did you not give a personal check to George Bournak about January—the first part of January, 1939, in the sum of $20?

A. No, sir.

Mr. Knoeller: What was that name?

Mr. Goldberg: George Bournak.

Mr. Knoeller: What date was that?

Mr. Goldberg: I said first part of January.

Mr. Knoeller: Which year?

Mr. Goldberg: 1939.

Mr. Goldberg (Q.): State whether or not you

510 gave George Bournak a personal check; that is, your own check, signed by you, payable to cash, in the sum of $20, in February, 1939.

A. No, sir.

Q. Will you bring in your bank book, your check book and your bank statements for January and February, 1939?

A. Yes, sir.

Mr. Knoeller: That is objected to unless there is more connection shown. It is irrelevant, in-

competent and immaterial so far as the record now stands, no basis for it.

Mr. Goldberg (Q.): Mr. Wood, would your answers——

Commissioner Gooding: Just a minute. I will sustain that objection unless there is some——

Mr. Goldberg: I am going in that further.

Q. Mr. Wood, would your answers be any different if I said the amount of the check was $25.00 instead of $20.00?

A. No, sir.

Q. Now, would this refresh your recollection? Did Mr. Bournak ask you to contribute any money in January or February of 1939 so as to pay for printing to oppose Phil Valley in his election for the office of business manager?

A. No, sir.

Q. If the Board please, I ask that Mr. Wood be directed to bring in his personal checking account for January and February of this year, as we propose to establish that a check was issued payable to cash in the sum of $20.00 or $25.00 turned over to Mr. Bournak and in turn paid for printing leaflets running down Phil Valley and trying to defeat him as business agent of the union, and it shows—for the purpose of showing two things: First of all, intent to interfere with the operations of the union on the part of an employer, and, second, to deal—in connection with the veracity of Mr. Wood as a witness.

511 (Discussion as to pertinency of above testimony.)

512 I recall having a conversation with John Alex-

ander after the union election, but do not recall saying to him after he told me the results of the election that it was too bad for the union. I didn't have any opinion as to what was too bad or too good for the union. I don't know how the conversation between me and Mr. Alexander came about. Mr. Alexander must have wanted to talk to me about it. This conversation took place in the lobby of the Plankinton House.

513 (Discussion between counsel establishes election referred to was conducted in February, 1939.)

Again referring to Bournak and the check incident, I don't remember whether or not I gave a check to him in the sum of $25.00 between the 1st of February and the 10th of February, 1939, to pay for campaign literature of Jules Desautelle and John Alexander. I was so frequently called upon for advertisements, for the purchase of tickets, or to help for something or other, some of which I subscribed to and some of which I didn't, that I don't remember.

Q. Well, now, do you recall giving a check to George Bournak for $25.00 between the 1st of February and the 10th of February for any purpose?

514 A. No, I don't recall it.

Q. You don't recall it? If you had given it to him you'd recall it?

A. No.

Q. Oh, you wouldn't recall it?

A. No; not necessarily.

In the summer of 1938, when the 1937 contract came up for renewal, we signed a closed-shop agreement. That was the first time in the history

of our hotel that substantially all of the employees had to belong to a union in order to work at the hotel.

515 Under certain conditions, I am in favor of a closed-shop contract, but in this particular case I wasn't, because it forced too many of our employees to joint against their wishes. I have not promised anybody since the commencement of the strike that if they will refuse to strike, or if they will come off the picket line, or more particularly if they will work during the strike, they will have a job with the hotel for life. At the meeting, held at room 312, I may have told the employees that I have tried to be a good boss.

516 I don't remember. I did not make that statement with the intent and purpose of having my employees refuse to go out on strike. I don't believe I made such statement. I didn't tell my employees that I had been good to them and that I didn't think it was necessary for me to sign a contract.

Reference was made at this meeting as to whether or not the union would blackball anybody who did not go out on strike. I don't remember Mrs. Hehmeyer stating that she didn't think the 517 union would go to that extent. I answered the question. I said: "Let's not go into that at all. I didn't bring you up here for such discussion. I just wanted to read this letter to you." My purpose in reading that letter was to explain carefully that we are willing to agree to the award of the arbitration board, since we were putting it in the mail that night and some of them would not

have received it until the second day following. I was very careful so as not to try to influence them in their decision in any way. If I had been trying to persuade them not to go on strike, I would have been more direct. I told them specifically when the meeting started that there was to be no discussion either pro or against the union; that I was simply going to read them a letter that was being put into the mail to them that night and that I wanted them to understand the different paragraphs of that letter.

518 I am not acquainted with the ability of my employees to read.

519 I did not send any telegrams to employees asking them to come back to work. I do have here four copies of four telegrams that I did send them. Exhibits 39, 40, 41 and 42 are telegrams addressed to four individual employees of the Plankinton Hotel.

520 All of the telegrams except one are under date of November 5th. One of them reads: "Please call me on the phone as soon as convenient," and the other reads, "Please telephone me at your earliest opportunity."

521 When I answered that I didn't send the employees telegrams to come to work I meant that I did send them telegrams to phone me.

After these telegrams were received some of the employees phoned me. I don't know whether all of them did or not. I suggested that they return to work; that we are open and operating and would be glad to have them back. I did not assure them of permanent jobs for life. I don't recall sending any other telegrams besides these.

522 I did not tell any of my employees that if they worked there during the strike they would have a job for life. I couldn't do that, since I might or might not outlive them. I did not state that I would lock the doors before I ever signed with the union. If I made such statements I probably would remember them.

523 I did not contemplate any cut in wages at the Plankinton House. I made the statement to some of the employees that we were not planning to cut wages. I did not tell anybody that we were going to raise them as soon as we could. I may have remarked that it would be very pleasant to raise wages if we could. I don't know whether or not that conversation was for the purpose of inducing the employees not to go out on strike, because I do not remember the conversation. I didn't tell any employee after the strike started that we were going to organize our own union at the Plankinton. I could not bring the check statements back this afternoon since my personal bookkeeper is out of the city.

524 At this point there was a recess from 3:05 p. m. to 3:20 p. m., after which the following proceedings were taken:

Mr. Knoeller: If the Board please, I would like to ask Mr. Wood one question before the day is over in regard to this proposition.

Commissioner Gooding: I think Mr. Goldberg has some more. Will you take the stand, Mr. Wood?

Mr. Goldberg: Yes.

HIRAM O. WOOD

resumed the stand and was examined and testified as follows:

525 Mr. Knoeller (Q.): Mr. Wood, you were asked by Mr. Goldberg a few minutes ago in respect to an alleged payment made by check by you to Mr. Bournak for the purpose of ousting Phil Valley as an officer of Local 122; did you give Mr. Bournak any such check for that purpose?

A. No, sir.

Q. Did you give Mr. Bournak any check at all in 1939?

A. Yes, sir.

Q. For what purpose?

A. To help his campaign fund.

Q. Will you explain it to us, the time and the place, and so forth?

A. He approached me and said he had two or three very desirable people that he wished to elect to some office in the union. I thought he represented Mr. Valley, incidentally, and wanted some help for some printing. I said I'd be glad to help him. I gave him a small check—I have forgotten how much it was—to pay for some printing. As a matter of fact, I think I paid the printing bill, but it was not to oust Mr. Valley.

Q. Was that the usual and customary political demand that is made at the hotel by various groups?

A. We subscribe to all the advertisements in all these union magazines, buy tickets, and we help them along, have always.

Q. Was it in that line of thought that you gave this contribution to Mr. Bournak?

A. Yes, sir.

Q. Have you personally any animosity or antagonism toward Mr. Phil Valley?

A. No, sir.

Q. Did you have any such during the early part of this year?

A. No, sir; I told him——

Q. Have you ever had any animosity toward Mr. Valley?

A. No, sir.

Take the witness.

526 **Examination** (Continued), by Mr. Goldberg.

Since Mr. Goldberg asked me the last question and since Mr. Knoefler just questioned me, we had a recess of about ten or fifteen minutes. I do not recall telling you before the recess that we didn't give Bournak a check for any reason. I recall your asking me if I gave him a check to hurt Valley, and I answered "no." If you asked me whether or not we gave a check to Bournak for any reason, I suppose it to be pertaining to hurting Valley. I did not tell you before the recess that I gave Bournak a check to use in the election.

327 I did not tell you that the check I gave to Bournak was for the purpose that I now tell you it was, since I have been continually told not to volunteer any information. It is not true that I don't want you to have all the information concerning the matters you are asking questions

about. Now that I have refreshed my memory, I do not remember whether the check was payable to cash or whether it was given in the first week in February.

528 My memory was not refreshed as to giving Bournak the check for election purposes. I knew it. I gave Mr. Knoeller the information, because he asked me the question in a way that I could understand. I thought you were asking the questions about the check to hurt Mr. Valley. I did not know that Mr. Bournak was opposing Mr. Valley or that his friends were running against Mr. Valley. I had no feeling in the matter whatsoever as to whether or not Mr. Valley was too active in protecting te employees' interests. I have heard you boast that the hotel contract in the City of Milwaukee is considered the fairest in this industry in the country. I don't recall hearing Mr. Whyte, one of the attorneys that presented this matter at the arbitration, make such statement.

529 I do not recall any other time that I gave a check to any union or union representative for campaign purposes. I did think at the time that it was proper for me, as an employer, to contribute to a union campaign in an election of officers.

530 I have not been asked to contribute to the independent union. I did not think that my contribution of money to be used in the campaign of a union election was improper. I admit that the purposes for which I gave that check was to be used in the campaign of a union in behalf of some party. I have not told anybody since the strike

begun that we don't like Phil Valley. I did not know that Bournak in the campaign for election for which I gave a contribution was trying to undermine and depose Phil Valley. I know that I paid for some advertising for two or three people that Mr. Bournak was very anxious to have elected for some office or other in the union. He didn't specify and I wasn't particularly interested. I was not told that the check of $25 that I contributed, payable to cash, was to pay for a leaflet known as "The Spark." I never heard of it.

531 I do not think that I can produce the check here, since I am under the impression that it is a personal check and my bookkeeper is away on a holiday somewhere in Indiana, and I do not know when she will be back. I admit paying for this advertising.

(Commissioner Gooding, at request of Goldberg, for the respondents, requests witness to bring check and stub if he has it.)

Respondent's Exhibit No. 42 is a list of the Plankinton House employees as of December 1st and also a record of employees as of June 16, which was prepared by the hotel in accordance with the request of subpoena duces tecum. This list includes parking space employees, office employees and assistant managers.

533 I am the only employee that is not included. I did not segregate the employees into separate units such as bartenders, laundry workers, building trades employees or hotel and restaurant workers.

534 When I gave the Labor Board the total figure of employees working at the hotel, I included everything, including parking space employees. When I gave the figures as to employees who were back at work, I likewise included all employees and also included employees who have been hired since the strike began and have taken the place of my boys and girls who were out on the picket line.

I knew that the contract of June 16, 1938, provided that when we were in need of employees I was to call the union for help.

535 Q. Now, during the life of the contract, did you ever hire employees without first applying to the union for help?

A. Yes, sir.

Q. Did you know it was a violation of contract?

A. Yes, sir.

I hired employees without applying to the union in accordance with the terms of the contract because the union is interested in getting work for their members without regard to their ability. I am very much concerned over getting able people, even though later we ask them to join the union. I would not call a bartender who was an apprentice and who had not experience, an able man. I know that we hired such a man without first applying to the Bartenders' Union.

536 I did that because I wished to do it contrary to the terms of the agreement. It is not because I wanted to stack the employment roll with non-union members so that if it was determined that

a vote must be held I would have nonunion people to swell the vote against the union. I do not know that one reason why the union refused to submit to a request for a 75 per cent vote was because I had swelled the roll of nonunion men contrary to the contract. When I engaged this one young man in question, we were not in any altercation with the union over the contract or anything else. I don't think that the dispute with the union started when the renewal came at the time the notices were served.

537 I do not know that our representative stated that no closed shop agreement could be signed unless a vote was had in accordance with the law. It never entered my head until the award was handed down by the arbitration board. I don't know that that was the position taken by the representative of the company or that that was what created the arbitration demand.

The name of Charlie Addis who appears on this list was hired in October, 1938.

538 I did not know that he does not belong to the union yet. Yes, I believe I did, I think he is a student. I did not know that he hasn't been a student since last fall. As the manager of the hotel I instructed the department heads that we had a contract which required everybody to belong to the union and instructed them to see that that term was carried out. I know that we repeatedly sent people to join the union that we engaged. I may have fallen down in one or two places, it is possible. I did not insist that they comply with the contract and hire union members first. I never told them that.

539 I sent my department heads a copy of the contract and told them that people must belong to the union if they worked at the Plankinton House. It was our common practice to call the union first before hiring anyone. Frequently, I did not do it because I responded to some other appeal for work or something of that sort.

540 It was both in response to appeals for work and because I wanted to hire my own type of employees, which caused me to do this. I did not communicate such information to my department heads. I did not know that Mrs. Hehmeyer was opposed to unionization. I told them their waitresses must become members of the union always.

Q. But you didn't insist that your department heads comply with the union contract, namely, that union members—that the union should be called for help when you needed help?

A. I'd like to answer that if I may by saying that I didn't feel inclined always to follow that contract, but that I pretty generally insisted that our department heads do so.

I think that Charles Addis didn't become a member of the union because we thought he was a student. I never checked in to find out that he wasn't. Mrs. Hehmeyer ha contact with him every day. Student help get their meals and some money. Naturally, when they are going to school they can't work, but their time is not limited as to number of hours.

541 (Discussion between Commissioner Gooding, coun-
543 sel for respondent and counsel for complainant as to materiality of pay roll records with respect to

Charles Addis. Board rules not pertinent, to which counsel for respondent takes exception.)

543 **Examination** (resumed): I know that Wayne Banning was employed as a bartender for about six months before the strike began, but I didn't know that he didn't get a bartender's license until September of this year.

544 When I hired Banning I didn't apply to the union for a bartender, because I wanted him to learn the game, and I told Mr. Burgarino that a little later when he became professional enough to act in the capacity of a bartender he would apply for membership in the union.

545 I did not know that under our union contract there is no provision permitting school employees to work. I didn't know that it was the kindness of the union that permitted the boys to work two hours a day for meals. I thought we were doing these boys a favor.

I have read the contract and have told all my employees in a supervisory capacity to read the contract. It didn't make any difference to me that there was no provision in the contract which permitted students to work as busboys.

546 That matter was discussed with the business agent of the union when we signed this contract. Students work as busboys in every hotel in Milwaukee. The point had never been brought up and should not be at this time. The contract provides that all professional busboys shall be members of the union.

I know Walter Simmen, who is the chef at the Plankinton House.

547 As chef it is entirely up to him whether he wants to belong to the union or not.

Harvey Weber is purchasing agent and day and night steward. I do not know whether or not he joined the union. He is a purchasing agent and I don't believe that the contract provides that he must belong to the union. We called him purchasing agent or steward. Stewards do not always do the purchasing, he does. We did not ask him to join the union. Peggy Hehmeyer does not have to belong to the union.

548 William Komes is a head waiter. He doesn't have to belong to the union.

Loretta Sohm is a waitress. It is not possible that she isn't a member of the union. She belongs to the union. Mr. Hoffman is manager of the Plankinton House. O. L. Thoms is the auditor.

549 Cobina Block and Clara Heitman are cashiers. Fred Moser is the night superintendent. His duties are to turn out the lights when they are not necessary, locks the back door and puts the cat out and all those jobs that a fellow does at home. I guess he is a glorified houseman. I doubt if he would be required to be a member of the union, because he has supervisory capacity over the help. That is a matter of opinion. I did not ask him to join the union.

Emily Holzer is assistant housekeeper. I do
550 not know whether she belongs to the union and I did not ask her to join.

Robert Jeske is an assistant agent and steward. I did not know that he didn't belong to the union, nor do I know that the contract requires him to

join. He has been in our employ since the entire period the closed-shop contract was in effect. I know that he was employed from August 19, 1936, to September 29, 1938, at which time he left, and that he was re-employed on October 21, 1939.

In October, 1939, I didn't ask the union for an assistant steward, because I didn't want one that came from the union.

551 I do not know who employed him. I imagine one of our department heads did. In my opinion he would have joined in a few days if you hadn't gone on strike.

552 Thomas James works in the laundry. I think he belongs to the Laundry Drivers' Union.

Mary Skoczas and Gertrude Nusslock are laundry workers.

Thomas Baker is a maintenance man, having to do with machinery and belongs to some union.

Otto Bonse is a repair man. I don't know whether he is a union man.

553 He does furniture repairing, carpenter repairing and that sort of thing.

Dave Ginsburg is a bartender.

Frank Kassimor is a barman, and Elmer Hundt is an outside man having charge of our parking stations all over town. We have one parking station west of the hotel. The one north belongs to the Plankinton Trust. We also have a parking station on Second street and on Plankinton avenue. This is on the premises where Charlie Toy's Building was and goes from Second street through to Plankinton avenue.

554 (Discussion and identification of the various locations of the filling stations.)

555 Alfred Kolka is a parking station boy.

Birdie White is a head waitress.

Mrs. Hehmeyer is maitre d'hotel, head of the food department and in charge of the waitresses.

556 I do not know Vernon Hahn, who has been with us since September 5, 1937. He is a student busboy, as is Edgar Lindenberg.

Grace Guse is a cashier in the Coffee Shop.

557 I know that by the terms of the contract cashiers are supposed to belong to the union and that Cobina Block, Clara Heitman, and Grace Guse are cashiers, are not members of the union and have not been at any time during the life of the contract.

Dorothy Wahlgren and Margaret Vohla are also cashiers.

Merrill Sutherland is a printer. She does our menus. She runs the multigraph.

There are fifty-six names on page 4 of Exhibit 24.

558 I do not know whether or not you would be correct in saying that out of those fifty-six names only four of them were members of the union at the time of the strike.

Elaine Beaudry, Jessie Buderus and Ray Cacation were hired during the strike. We did not ask them if they were union employees.

I do not know in what capacity Julius Cook was hired on September 5, 1939, nor do I know that he is not a member of the union. I don't know whether he was asked if he was a member when he was hired.

Anita Corey who was hired on November 4, 1939, is the wife of Halsey Corey.

559 She came to work during the strike.

I do not know Martin Kottingham, who was hired on September 5, 1939. I don't know who hired these people.

560 Mary Garner is a maid, who was hired on October 10th. I don't know if we applied to the union for a maid before we hired her. The housekeeper did the hiring. I told union officials that I didn't want them to go into the departments not around the hotel. I invited them to see me about any contracts they might want to have with the employees. They never remonstrated with me about it. I asked them not to go through the departments.

561 They understood that I didn't want them to go through. I didn't forbid their going through. I don't remember grabbing Mr. Heisdorf by the arm one day and walking him out of the kitchen. I don't remember ever seeing him in the kitchen. I don't think that I did that. I do not know what
562 position Martin Kottingham had with the hotel since December 5, 1939.

Ray Diel is a houseman, who has been working since November 21, 1939, and who came in during the strike. I did not ask him if he belonged to the union, nor did I call the union for help during the strike.

Harvey Effinberger has been an apprentice in
563 the Industrial Commission since January 23, 1939. He is learning to be a cook. He went out on strike, came back and went out again. I don't know where he is now.

John Flood is a student.

Gerald Glowing was hired during the strike.

It is a safe bet to say that we didn't call the union for any of those hired during the strike period.

Herbert Groenewald, who was employed on October 10, 1939, works on the parking lot.

I believe that George Hacket hired since June 7, 1939, is a student doing busman work. I don't know how many student busmen we have.

564 When I hired student busmen I did not consult the union to find out whether we were having too many of them who displace regular busmen. We have full time busmen working at the hotel.

564-565 (Discussion between Commissioner Gooding and counsel as to possible stipulation to shorten testimony with respect to these exhibits.)

566 Cover.

567 Cover.

568 **HIRAM O. WOOD**

resumed the stand, adversely, being previously duly sworn, was examined and testified as follows:

Examination (continued), by Mr. Goldberg.

(The parties stipulated that the secretary of the union, if called, would testify that of the 56 names appearing on page 4 of Exhibit 24 only four were members of the union, and one a suspended member. It was further stipulated with respect to that part of Exhibit No. 24, which is designated as a list of Hotel Kilbourn employees, that four of the persons thereon named never belonged to

the union, while an additional four persons thereon named commenced employment with the Hotel Kilbourn during the strike and were not members of the union.)

569 I recall that two weeks before the strike we were in need of a houseman at the Plankinton House. I do not recall telling one of our housemen to get another houseman, nor do I remember telling him not to apply to the union, because, even if it were a violation of the contract, the union couldn't find out.

570 I have here the check of which we spoke yesterday. (Check marked "Exhibit No. 43" and introduced in the testimony.) I recognized the signature on the bottom of that check as being my signature. The check is one of the Plankinton House checks, dated February 6, 1939, and is in the sum of $26, payable to the Milwaukee Wochenblat, which company has endorsed it on the back. I know that that company does printing, and this is the check I gave in payment of their printing bill. I gave it to George Bournak.

571 We have an employe by the name of Emily Holzer, who is a curtain hanger at the hotel and has various other duties. I do not believe that she is a member of the union. Supervisors do not come within the contract, and a curtain hanger is a supervisory employee. Her work consists of hanging curtains.

572-582 (This testimony again deals with the question of interstate commerce, and is, therefore, not pertinent to this appeal.)

583 I know Dan San Miguel, the little Filippino boy who worked at the establishment before the strike.

I think his name is Don. I remember seeing him November 26, 1939, about 11 a. m. I spoke to him
584 at that time. I do not remember telling him that I was sick of his picketing in front and that I would bust his head against the wall. I did not threaten to send him back to the Philippine Islands, nor did I threaten him at all.

I followed him down into the dressing room when he went downstairs and spoke to him down there. I don't remember exactly what I said, but while he was removing his working clothes I said: "Perhaps you'll come back to work, or perhaps you'll get another job, and in either event you can have them any time you wish. You can come in again and get them, or you can—we will send them to you, I believe, if you wish us to, but you needn't take them with you today, unless you have other work." I believe that I suggested to him that he should leave his clothes in the locker and go back to work. He left his clothes, but did not go back to work.

585 When I spoke to him near the desk I invited him to stay for dinner. I asked him if he didn't think it was unfair to his two children to stay off the job. I believe I went so far as to suggest that if he needed anything he get in touch with us; and I believe I also suggested that he talk to his fellow countrymen with regard to the situation, because he told me that he was afraid to return to work because too many threats had been made; that he worked nights and was afraid to leave the hotel at midnight, or something like that. I told him that six or seven of his fellow countrymen were back, and he answered that they didn't have

children and a family, and that was why they could stay.

When I offered him food and help the thought that that would influence him in his decision as to his rights to work or not did not go through my mind at all. I suggested that he would have to decide for himself, and turn it over to his countrymen for advice.

586 House detectives, policemen, or watchmen, were hired during the strike, but not by me—by the owners. I do not know their names. They are not listed on Exhibit 24 as employees because I haven't received any bill for their services. The Plankinton House Company is paying for their services. There are two of them, and I do not know whether they carry weapons or not.

587 They are on duty twenty-four hours a day. I suppose they are there to guard the property. I do not consider them employees of the hotel, but guards of the hotel property for the owners who engage them.

I have copies of all the letters I sent to the employees.

588 (Exhibits 47, 48, 49 and 50 marked by reporter.)

Exhibits 47, 48, 49 and 50 are copies of the letters I sent to the employees. Exhibit 47 is dated August 21, 1939, which is before the arbitration award came down. When I sent that letter it did not occur to me that it would interfere with the independent thought of any employees concerning the subject matter discussed, or that it might have the effect of influencing the employees away from the union, or have any effect in influencing

the employees in any way concerning the new contract, nor did those things occur to me when I sent Exhibits 48, 49 or 50.

589 Exhibit 50 was apparently sent shortly after the strike, judging from its wording.

(Exhibits 47 through 50 offered and received.)

On November 12 or 13 I received a letter from the union in reply to the letter which we sent to the employees.

(Exhibit No. 51 marked.)

590 After we received Exhibit 51 from the union we did not send any letters to our employees in reply. I can see from the letter that the union stated it was willing to vote under the auspices of the National Labor Relations Board, and was also willing that we be not bound by such vote.

591 Mr. Goldberg (Q.): Now, state, Mr. Wood, whether or not this letter contains the following in reference to the vote: "In reference to the offer of a vote on the part of the union there is no 'hook' or 'catch' to this proposition. A vote of even one hundred per cent of your employes in favor of the union would not bind you to execute the supplemental agreement and grant the demands of the union. You still have the right legally to refuse to do so. It merely will show to you the wishes of your employes. If favorable to the union, you still are not bound to sign. If any number less than what your attorneys advise you, which in their opinion, is necessary to permit you to continue the closed shop contract, designate the union as their representative, and you, there-

fore, refuse to enter into the agreement, the union still can continue to picket and advertise the controversy in furtherance of such labor dispute." Was that paragraph contained in that letter?

A. You read it perfectly.

Q. Did your hotel offer to enter into a vote?

Mr. Knoeller: Now, that is objected to now on several grounds: First of all, if it is offered in the nature of a compromise, it isn't competent. And, secondly, it is merely a self-serving declaration on the part of Phil Valley.

Mr. Goldberg: If your Honor pleas , we are before a Labor Board who is interested in all efforts made to mediate and settle a dispute. An offer
592 was made, and the employer did not avail himself of it, didn't even show the courtesy to the union to reply to that letter.

Commissioner Gooding: Well, he has testified that he didn't reply to the letter, and I think that is sufficient. I will sustain the objection.

(Exhibit 51 introduced and received.)

I do not know whether or not a representative of the United States Government, the Department of Labor, contacted officials of the Plankinton House Company and offered their efforts to mediate the dispute.

593 Q. Did you hear that a Mr. Luecki had conferred with your Mr. Richardson and Mr. Robertson, or either of them, concerning an attempt to get a conference between the union representatives and your hotel representatives concerning this strike?

Mr. Knoeller: That is objected to as being irrelevant, incompetent and immaterial.

Commissioner Gooding: Objection sustained.

I have seen Exhibit No. 52 before, but it was neither printed nor mimeographed and distrib-
594 uted by our company. Somebody had this done and made us a present of a few copies, which we distributed. It was not printed by the hotel, and I do not believe it was printed by the Hotel Association. I believe that one of the Milwaukee hotels had it done, that is, one of the five that the union had negotiation trouble with. I suspect that it was the Wisconsin Hotel. We put a few on the desk for anybody who was interested enough to read it. I don't know whether the employees read it. It wasn't available to them. It was on our desk and perhaps some of them saw it.

595 (Exhibit No. 52 is offered and received in evidence, this being a reproduction of an editorial appearing on the editorial page of the Milwaukee Journal November 4, 1939.)

EMMET L. RICHARDSON,

called as a witness, adversely, on behalf of the respondents, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is Emmet L. Richardson. I am the president of the Plankinton House Company. I am not a stockholder except for one qualifying share.

596 I do not form the labor policies of the company

except in a rather remote way. I admit ultimate responsibility for any policy we have. I hardly know what you refer to when you refer to labor policies. The company has asked for a revision and elimination of the closed shop clause in the contract at the Plankinton House. It was willing to give the employees a week's vacation with pay. I think that the company was willing to agree to the revision in language of the "seventeen rooms or equivalent" for a day's work for maids. Mr. Wood would be more familiar with that detail. I did not hear Mr. Wood say the other day that he was not present at the negotiations, and that there was not reported back to him what the representatives agreed upon.

597 (It was stipulated that the parties had agreed on a revision of what constitutes a maid's work.)

598 I am not thoroughly informed, but I don't think that the revisions requested, for the hotel to provide uniforms to pantry girls, would have been a great burden upon the hotel. I would consider it a minor item of expenditure during the course of the year, but my judgment is not final.

599 In my opinion the cost of furnishing of uniforms would be a minor item of expense; that if you took it alone it would not be sufficient to induce the hotel company not to include such revision in the contract for the period commencing June 16, 1939, nor would the vacations with pay and the revisions in the definitions of what constitutes a maid's work be sufficient to induce the company to submit to a strike rather than include such

terms in the revisions of the contract for the year 1939.

600 (It was stipulated that the union's request to change its male employees' working hours from 9 to 8 was withdrawn.)

I understood that if the Plankinton House Company signed the supplemental agreement that the other hotels signed that there would be no necessity for a strike, and that the union would be satisfied.

601 I have seen a copy of the supplemental contract. We do not consider the signing of the supplemental agreement favorably. I do not know what motivated the union or why they asked for arbitration. I was not advised that the arbitration was requested by the union because the representatives of the hotel would not agree to any revisions unless they contained an open shop.

602 I was not advised, nor do I know it to be a fact, that the arbitration was necessary and demanded by the union because in addition to the open shop our representatives, along with those of the other hotels, namely, the Wisconsin, Medford and Eastway, insisted that the contract be revised by including an ineffectual seniority clause. I was not advised that the representatives of the hotel insisted that the revisions contained, in addition to the open shop and in addition to the ineffectual seniority clause, a provision which would take away from the union the right to dispute discharges, whether such discharges were with or without cause. I know that a reclassification of

the hotels was one of the points that we asked to have arbitrated.

603 I do not know that our representatives refused to sign a revision of any terms in the contract unless the union agreed to include such reclassification, with the resulting lowering of pay. I was not so informed. I did not know the details of the reclassification. I knew that a classification of the hotels seemed to be a fair way of approaching the wage situation. I did not know that the hotels in classification four were paying their employees $3.00 per week less than employees received from the same work in the same jobs for hotels in class one. I knew that some adjustment of expenses would follow a reclassification of the hotels.

604 I engaged Mr. Robertson as the attorney for the company, and gave him instructions in a general way as to the limits and duties concerning negotiations with the union. I asked him to keep in touch with me concerning those negotiations. I have seen the typewritten requests that were made by the hotels, and I knew that those things which I have just been questioned about were the demands of the hotel upon the union, but not in detail. I did not know that by insisting on such demands results would be as you have questioned about.

Q. Now, if you had known that would you have instructed Mr. Robertson to drop those demands?

605 Mr. Knoeller: Now, just a minute. That is objected to as being irrelevant, incompetent and immaterial to the issues in this case.

Mr. Goldberg: We might settle the dispute here if he answers correctly.

Commissioner Gooding: I don't think that is material. The objection is sustained.

(Discussion between counsel and Commissioner Gooding.)

606 **JOHN W. POLCYN,**

called as a witness on behalf of the respondents, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is John W. Polcyn. I am captain of police of the Milwaukee Police Department, and as such captain have charge of the investigations concerning matters pertaining to strikes.

607 On November 17th, about midnight, I had a report from patrol sergeant, Stanley Stackursky, that at about 12, midnight, on that date some one threw out a can of tomato juice on the Plankinton side of the hotel, apparently from the fourth floor window. The report indicates that it was thrown out towards where the pickets were walking, but that it did not strike anyone. The sergeant investigated in the hotel, but was unable to find the party.

608 (Discussion between counsel and Commissioner Gooding with respect to the relevancy of above testimony. Objection of complainants overruled.)

609 This is the only official report I have in my files with respect to this can of tomatoes.

610 We have a record of about eight or nine arrests

at the Plankinton House. Our investigation shows that one Leo Makoski, aged 25, residing at 787 North Marshall street, came out of the Plankinton building at 6 a. m. November 22, 1939, and stole a picket sign which was leaning against a building at the alley. He took such sign to an adjacent parking lot, where he proceeded to destroy it. He was arrested, found guilty of disorderly conduct, and fined $5.00 and costs, on November 22, 1939. My record shows that Makoski was accompanied by Charles Addis.
611 The case against him was dismissed. The record shows that these two came out of the hotel together.

Cross-Examination, by Mr. Knoeller.

The can of tomatoes was a closed can. The complete list of disturbances as reported to me are as follows:

"On November 4, 1939, at 3:10 p. m., patrolman Henry Neahrbass arrested Charles McLaughlin, charged with disorderly conduct.

612 "Also arrested and charged with disorderly conduct was John Heisdorf, 1020 North Fifteenth street. Both of these men were picketing the Plankinton Hotel on the Michigan street side. Both struck at Joseph Mueller, an employee of August Kellner, florist, 3258 North Humboldt avenue, who was delivering flowers to the hotel, and knocked a bundle of flowers to the pavement. Both were arrested and taken to court November 6, 1939. The cases were adjourned to November 17, 1939, on which date McLaughlin was fined

$10.00 and costs. The case of Heisdorf was adjourned until December 18, 1930. Twenty pickets were in the line at that time.

613 "On November 7, 1939, at 9:40 a. m., Paul Ziebell, 922 West Highland avenue, an employee of the Plankinton Hotel, was struck in the face by a picket, James O'Brien, who was picketing the Michigan entrance of the Plankinton Hotel. While passing the entrance he handed a picket sign to another picket in line, and, without warning, walked up to Paul Ziebell, who was standing in the doorway of said hotel, and struck him in the face. He was placed under arrest by patrolman Julius Mavis in District Court on November 7, 1939. Case was adjourned to November 17, 1939, on which date he was found guilty and fined $5.00 and costs.

"November 14, 1939, at about 2:30 p. m., Edward Knopf, 3555 North Eleventh street, an employee of the Plankinton Hotel, was kicked on the right leg by one Thomas O'Mahar, a picket at the hotel, residing at 602 East Juneau avenue. The said Thomas O'Mahar was placed under arrest by patrolman Charles Henrich of the Sixth Police District, taken to court November 15th; case adjourned until December 18th.

"On November 17, 1939, 11:20 a. m., while a delivery of salt was being made by the employees of the Morton Salt Company and Lester Raasch, an employee of the Plankinton Hotel, was carrying a bag of salt into the Plankinton Hotel, he was assaulted by Charles McLaughlin, 935 North Tenth street, and Mr. McLaughlin was arrested by patrolman William Schaetsel, taken to District Court and fined $25.00 and costs.

"On November 17, 1939, at 3:35 p. m., Rudolph Stano, a bellboy employed at the Plankinton Hotel, was placing some packages in an automo-
614 bile belonging to one of the guests of the hotel, and while so doing one Joseph Hofich, a picket, jumped out of the picket line without any warning, and jumped onto the back of the bellboy, commenced to assault him. He was arrested by patrolman Carl Koehler. Case was taken to court November 18, and adjourned to December 6th, on which day he was filed $5.00 and costs.

"On November 17, 1939, about 5 p. m., Thomas James, an employee of the Plankinton Hotel, was assaulted by a picket, Larry McAllan, who, without any warning, jumped on the back of Thomas James and struck him and knocked him down, and proceeded to kick and strike him until the horse-mounted patrolman, Clem Stapleford, interceded and placed him under arrest. Taken to District Court November 20, 1939; adjourned to December 6, 1939, on which date he was fined $5.00 and costs. * * *"

That completes the record, except for another disinterested person apparently arrested on November 27th or November 14th, by the name of Charles Stock, who was drunk and disorderly. He apparently has no connection with one place or the other.

There were several telephone reports by guests and others, who did not specify who they were, that they resented the booing.

Mr. Goldberg: Just a minute. I object to any reference to testimony of guests calling in, because that is hearsay. There is no telling

615 whether Mr. Knoeller or Mr. Richardson, or I, or some one else called in, and said, "We are a guest of the Hotel." That is of the rankest hearsay. I move that that be stricken.

Commissioner Gooding: It isn't proof of the fact that there was any booing or hissing, but it is proof that somebody called. Merely that there were reports made doesn't prove that there was hissing and booing, but the police were called. That is all this evidence is brought in for.

CAPTAIN POLCYN

resumed:

I received a report from the Chamber of Commerce that there was some booing at the hotel when students from some university were visiting at the Plankinton Hotel, but that was small, more of a general occurrence.

Redirect Examination, by Mr. Goldberg.

The police force has six men at the Plankinton House twenty-four hours a day.

616 They are stationed at different places where the picket lines are. Our department has been able to maintain order on the picket line very, very adequately. I think we have the situation well in hand. It is hard for me to answer whether the seven or eight arrests, commencing November 2nd, to date, which is December 13th, in view of the fact that picketing is going on for twenty-four hours a day, is a fine record from the viewpoint of maintaining order on the picket line. We have had strikes where there were more arrests, and we have had strikes where there were less.

"It seems that sometimes at the beginning of a strike, sometimes when certain people are not very familiar or get excited they become—make mistakes and then later they are—they realize the consequences, and they behave themselves."

617 As far as the pickets on the outside, they conduct themselves very orderly, outside of those instances. I wouldn't say that that was a small number of instances or disorders. It is a hard thing for me to answer that as to the amount.

Recross-Examination, by Mr. Knoeller.

We had six men stationed about the Plankinton Hotel from the very start of the strike on November 2, 1939. The men on horseback are just routines. They just patrol that district and check traffic conditions. As a matter of precaution, on several occasions when a delivery was to be made to the hotel, we sent more policemen down there.

618 We would just simply borrow the men from the Kilbourn Hotel, or from the Wisconsin, and sent three or four additional.

619 **DAN SAN MIGUEL,**

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is Dan San Miguel. I live at 204 North Fifth street and was an employee of the Plankinton Hotel before the strike. I am a member of the union and am out on strike. I was here in court this morning when Mr. Wood was on the

stand and when you questioned him about conversations with me on November 26, 1939.

620 At 11 o'clock in the morning of that day I went into the hotel. Mr. Wood was at the desk. He told me that he was sick of seeing me on the picket line, and he told me again that he was going to bust my head against the wall, and the last phrase he told me was that he was going to send me back to the Philippine Islands. When I came into the hotel I told him that I wanted to get my working clothes, and then he made the statements above.

621 I didn't do anything. He sent me downstairs with the house detective. He followed me downstairs and told me to leave the clothes and come back to work. I left my clothes, but didn't come back to work, and am still out on strike.

Cross-Examination, by Mr. Knoeller.

I am married and have two children. I worked at the Plankinton Hotel over a year.

622 Before the strike there was a friendly feeling between Mr. Wood and myself. Everything was all right. He never threatened me and we never had any argument. He didn't give me things to eat; I worked for it. He helped my family along.

I am now a member in good standing in the union. When I entered the hotel I didn't tell Mr. Wood, or anybody else, that I was leaving the picket line to go into the hotel. I was off the picket line and another Philippino went in, so I followed him to get my working clothes.

623 The other Philippino went back to work. My

purpose in going inside was to take my working clothes and find out long the strike would be on. I did not want to go back to work under the conditions of a dispute between the union and the hotel. I wouldn't go back to work for a scab. When the trouble is over I wouldn't mind going back. I knew that all my other Philippine boy friends had gone back to work. I did not go back to work because in case the union wins the case then I will be blacklisted, and then there will be no place for me to work.

624 When I was working I had broken hours between 3 and 6. I worked in the evening, too. I had a split shift. Many times I would leave work about midnight. The other Philippino boys who went back to work about a week ago stay in the hotel. I told Mr. Wood that I couldn't say in the hotel, because I had a wife and children to see every night. I told him that in case I go back to work it means I am going to turn down my organization and anything might happen. I did not mean that I might be attacked.

625 I did say to Mr. Wood that I feared for my safety walking home at night.

Redirect Examination, by Mr. Goldberg.

Nobody connected with the union threatened to beat me up if I went back to work.

Examination by Commissioner Gooding.

I told Mr. Wood that in case I turned the union down anything might happen and somebody might hit me or start trouble.

626 I told Mr. Wood this after he told me that he was sick of seeing me on the picket line and would bust my head against the wall. It was after I went down to my locker that I talked about being afraid about what might happen to me. The talk between Mr. Wood and myself in the locker room was very friendly. When we walked upstairs he just bawled me out. He didn't give me a chance to explain or say something.

Recross-Examination, by Mr. Knoeller.

Mr. Wood told me that in case my wife and children were in need of anything I should get in touch with him and he would be glad to help me out.

Redirect Examination, by Mr. Goldberg.

627– Rufus Costello, a Philippino boy who worked at
630 the hotel before the strike, is still striking.

EMMET L. RICHARDSON,

recalled as a witness, adversely, on behalf of the respondents, being previously duly sworn, was examined and testified as follows:

(It was stipulated by the parties that after the hearing is closed there will be given to the Board a copy of all the exhibits that were made a part of the arbitration proceedings. There was also introduced into evidence Exhibit 53, being the classification of the hotels, and Exhibit 54, being the minutes of the negotiations. It was stipulated also that Exhibit 55 would be intro-

duced and received, this being a copy of the supplemental agreement between the unions and the hotels, which was signed by the majority of the hotels.)

631 (It was stipulated that the hotel refused to sign the supplemental agreement, being Respondent's Exhibit No. 55.)

I was present when Exhibit 31; the memorandum of recognition between the independent and the hotel was signed. This was on December 1,
632 1939. I did not advise the representatives of the Independent Union that three A. F. of L. unions claimed contract rights because they did not elect to terminate the agreement of June 16, 1939.

633 Exhibit 13, being the letter from Phil Valley, was sent to my office by Mr. Wood three days before we signed the memorandum with the Independent Union. I had no discussion with the representatives of the Independent about the contract or the strike. On November 30 I advised Mr. Cory, president of the Independent Union, that the hotel would deal with the union only if it represented all the employees, including the parking station employees. I told him that the voting unit, in my opinion, consisted of those working at the hotel and the Kilbourn and in the parking places.

634 I did not read the law to him. I told him that was my idea of my ability to recognize any new group; that it would have to be a majority of the employees, including parking station employees. I did not tell him about certain defined units

under which I had signed agreements with unions before.

At the time I signed Exhibit 31 I had also received reports that local 122 had filed a petition with the National Labor Relations Board. I did not mention this to Mr. Cory. My interview with him was confined to checking his membership with our pay roll employees. I did not know that Mr. Wood was not hiring new employees in accordance with the terms of the contract dated June 16, 1939.

635 I heard Mr. Wood testify that he did not hire the guards at the Plankinton Hotel. I authorized Mr. Robertson to hire them. I understood that they were not hired from any agency. One of them is named Otis Gomillion. The other is
636 Edward Arnold. I do not know if these gentlemen are licensed to do such work by the State of Wisconsin, and I don't know that the work they are doing requires a license.

(Section 348.472 of the Wisconsin Statutes, relating to the use of unauthorized persons as officers, offered into evidence.)

637 I know nothing about these men being detectives, and I do not know whether Mr. Robertson investigated that. They were first hired on November 24th. We did not have any guards at the hotel before November 24th to my knowledge.

638 I met with an individual by the name of Luecki, who told me that he is associated with the Department of Labor of the United States Government, and that he acts as a conciliator or medi-

ator in labor matters. He told me he was acting as such in the Waukesha Motor dispute at the time he conferred with me. He tried to arrange for a conference between the representatives of the union and the hotel to discuss the possible settlement of the strike. We refused to hold such a conference.

639. We did not refuse to hold a meeting, but I told him that, as I understood it, there was just one point involved, and that apparently neither the unions nor the hotels could compromise without one side or the other yielding the entire point. It wasn't that there were six or eight different points, where one might give on one side and the other give something else, and so reach a common ground. With one point involved I didn't see where anything that could be called a compromise was possible. I told him that the matter was before the Wisconsin Labor Board. I told him I would refer this to Mr. Robertson, our attorney, but I did not decline to meet with the union's representatives.

He conferred with Mr. Robertson. I was present at part of the interview, and I have no recol-
640 lection of Mr. Luecki asking for a conference or any refusal to hold a conference, or any consent to hold a conference while I was there.

I remember his telling me, or I got that impression, that the union was willing to sit down in any conference at any time to try to settle the dispute. No conference resulted or was had to this day. I told him that it was very difficult while we were the object of a strike to sit down and calmly confer about things.

Q. Are you willing to sit down and confer at this time, and try to negotiate a settlement of the strike?

Mr. Knoeller: That is objected to as being irrelevant, incompetent and immaterial, not within the issues of this case at the present time.

Commissioner Gooding: Sustained.

641-642 (Discussion between counsel and Commissioner Gooding, at which it was stated by Mr. Robertson that he told Mr. Luecki that the only dispute, as far as the hotels were concerned, was a clear-cut dispute on the issue of closed shop under the terms of the arbitration award; that the union indicated that it was very firm in its position, and that the hotels were very firm in their position, and, accordingly, he didn't see that there was any purpose to be served by a meeting. Mr. Knoeller stipulated that that was substantially the position of the hotel, so that it would not be necessary for Mr. Robertson to take the witness stand.)

Mr. Richardson Re-Examined, by Mr. Knoeller.

Mr. Gomillion and Mr. Arnold were employed on November 24, 1939, primarily because of the spilling of what is called a stink bomb on the third floor of the hotel the preceding Sunday. We had considered it for some time, and I was not favorably inclined to employing anyone to protect the property, but after that happened I did two things: I took out strike insurance, and authorized Mr. Robertson to get someone to be inside the hotel and protect our furnishings and the property generally.

I have examined Exhibits Nos. 5 and 6, one being the Union Revisions Requested, and the other being the Hotel Revisions Requested.

643 When I testified this morning in response to the question as to whether or not I agreed to the various demands of the unions, either entirely or partially, that testimony was subject to the provision that the unions would likewise agree and consider the proposed revisions of the hotels as set forth in Exhibit No. 6. I did not mean that we would accept all of their suggestions without having ours granted.

HIRAM O. WOOD,

recalled as a witness herein, adversely, on behalf of the respondents, having been previously duly sworn, on oath was examined and testified as follows:

Examination, by Mr. Goldberg.

643-653 (Testimony with respect to interstate commerce operations of the hotel omitted because not pertinent to this appeal.)

OTIS GOMILLION,

called as a witness on behalf of the respondents, having been first duly sworn, on oath testified as follows:

I am a private detective and a special investigator. Since June 28 of this year I have been affiliated with the Russell Protective Corporation. I am licensed to act as a private detective by the State of Wisconsin. I know Edward Alfred. He

654 works with Russell. I am not here all the time. I am in Waukesha County part of the time, and other counties. I do not know whether Mr. Alfred is individually licensed or not, but I know that I am and I know that the agency is.

Cross-Examination, by Mr. Knoeller.

I was employed to protect the property at the Plankinton Hotel by Mr. Clark Robertson.

655 I am not positive of the date. I think it was Friday, November 24. That was the last week in November. When I was employed Mr. Robertson told me what my duties were and gave me instructions. He did not tell me I had to do any detective work. The duties were to go into the hotel and remain there and try to see that no one was wandering around the hotel and did damage. He told me that there had been stink bombs or some acid thrown, and that he would like to have us remain there until things were settled again, and see that no one was around the hotel that didn't belong in there and wasn't a guest.

Redirect Examination, by Mr. Goldberg.

In my employment I am trying to protect the personal property inside the Plankinton Hotel. I do not carry any arms, any billy or black-jack. I have a room on the fifth floor, where I keep a revolver for use when I am on officer's duty. I do not carry it around the hotel.

656 I do not know Edna Barrett. (Edna Barrett stands up.) I did not see her around the picket line at the Plankinton Hotel shortly after the

strike began because I wasn't there until the 24th, or the last Friday in November. I did not visit there before then.

657 I have never spoken to anyone outside of the hotel, except to Mr. Valley one night. I saw him near the Plankinton in the alley. I have spoken to no picket whatever since I have been there. I am positive that I did not make any statement that the hotel had six million dollars to spend, and the pickets would be outside till the worms ate their bones.

Recross-Examination, by Mr. Knoeller.

I am an officer with a power of Sheriff of the Thirteenth Judicial Circuit of Wisconsin under a Circuit Court order of Judge C. M. Davison, to continue as such until the Presiding Judge deems it necessary to discontinue. As such judicial officer I obtained this revolver.

658 I took the revolver down to Elkhorn last week while I was doing regular routine police work. I brought it back to the hotel, and it has not been out of my room since the night I took it up there after I arrived from Waukesha. I saw a broken window at the Plankinton Hotel at the northwest corner of the building, about thirty feet in from the alley. That is not where I saw Mr. Phil Valley.

Redirect Examination, by Mr. Goldberg.

The commission I speak of is in connection with the grand jury investigation in Waukesha as a special investigator for that county.

ROY DUNHAM,

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

659 **Direct Examination,** by Mr. Goldberg.

My name is Roy Dunham. I am a member of Local 122. I was put on as picket captain of the line at the Plankinton Hotel. About 6 o'clock one morning two fellows came out of the hotel and ran away with a picket sign. I learned later that one's name was Leo Makoski and the other was Charlie Addis. As they went around the corner of the building one grabbed the sign. The other one grabbed hold of the sign and tore off a strip.
660 They ran down the parking lot and finished wrecking the sign. The one who tore off part of the sign is the one who was not fined by the Judge. The one who ran off with the sign and broke it up was fined $5.00.

Cross-Examination, by Mr. Knoeller.

I am not a former employee of the Plankinton Hotel, but am a member of Local 122. I have been a member for seven months. My profession is not captain of picket lines. This is the first time that I acted as a picket captain. I am friendly disposed to the union. I would resolve any doubts in their favor. When Mr. Addis and Mr. Makoski
661 left the hotel I was in the alley. This was about 6 o'clock in the morning. Mr. John Verbos was with me, and we were about twenty-five feet from the corner of the building when they grabbed the

sign. I don't know how far north of Michigan street sidewalk I was. I was clear down almost to the other end of the building. I was about twenty-five feet from the northwest corner of the
662 Plankinton Hotel, in the alley. We were standing quite aways from a projecting platform trying to keep out of the wind and keep warm. We were not on the parking lot. We were not on the premises of the building, nor were we on the delivery platform inside the delivery door, or in the middle of the alley. We were standing next to a projecting piece of the building. I did not have a picket sign in my hand. The sign belonged to one of the pickets that was off on relief for lunch. The bottom of the sign was in the alley and it was
663 leaning up against the building. The sign is made of cardboard and wood. The handle being about three feet long, and the sign is about two or two and one-half feet square. I don't know the value of it. We did not see Mr. Makoski and Mr. Addis leave the hotel. When I first saw them they were coming down the alley. from Michigan street,
664 walking northward. It was light enough for us to see what was going on. I didn't see who it was until they got within thirty feet. Near the southwest corner of the Plankinton Hotel there is a little office where policemen congregate, and there were some policemen in the office at that time. They were in plain view of anybody who walked down the alley. I did not say anything to Makoski or Addis, and they said nothing to me.
665 During all the time this was going on I remained on the west side of the building. I saw the police-

men later come across the parking lot with Mr. Makoski and Mr. Addis. He had one on each arm. As they walked by us we walked kind of outwards and followed with our eyes. As they came to the alley this one fellow reached down and grabbed the sign and they started running around the corner, and just as they went around the corner this other fellow grabbed part of the sign and tore it off. I couldn't say what happened after the boys turned around the corner of the north end of the building. We didn't have to come around the north end of the building be-
666 cause the officer was leading them back. Mr. Addis and Mr. Makoski were not joking, smiling and laughing at the time Mr. Makoski walked over for the sign. I was not present when the officers interviewed them.

Redirect Examination, by Mr. Goldberg.

I was in court when Addis and Makoski testified that they came out of the hotel.

Recross-Examination, by Mr. Knoeller.

667 I was not present when the officers told Mr. Addis that they had nothing against him and that he could go. I was in court and testified against Mr. Makoski and Mr. Addis. I was present when the Court dismissed charges against Mr. Addis. Mr. Verbos swore out the warrant for Mr. Addis.

Redirect Examination, by Mr. Goldberg.

I believe the police officer said that he didn't see Addis tear off the sign and therefore he could not arrest him.

FRANK STACHOWIAK,

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

668– Testimony omitted because it relates to the in-
676 terstate activities of the hotel, which are not pertinent on this appeal.

676 **ROBERT KNOOP,**

called as a witness on behalf of the respondent, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is Robert Knoop. I live at 3258 North
677 Green Bay avenue. I am married, but have no children. Before the strike I was a member of Local 122, and was employed at the Plankinton Hotel. I am now out on a strike. I worked the first night of the strike. On November 3rd, about 5 p. m., I reported back to work at the Plankinton Hotel, where I worked as a bell man. When I came in I saw Mr. Wood in the lobby and told him I would like to go back to work. He said that was fine, and that my job would be good for life
678 if I do. That night I went to the Kilbourn Hotel, where I worked. After going home I decided I wanted to see Mr. Valley and tell him I was

going out on the picket line. I then went back to the hotel and told Mr. Wood that I was going out on the picket line. Mr. Richardson was then
679 with him. They asked me to stay at the hotel, and bring my wife down, and live right in the hotel. They said they wouldn't sign with the union even if they had to lock the doors. They said that if they did lock the doors, they would take me down to Chicago and get me a job there. I did not go to work, but went out on the picket line.

Cross-Examination, by Mr. Knoeller.

I know Mr. Richardson. It is possible that it was Mr. Van Houten instead of Mr. Richardson who was present when Mr. Wood and I were
680 talking. At the time that I spoke to Mr. Wood there was no discussion with regard to the safety of the employes who remained at work. My wife and I did not come down to the hotel. We were not considering the security of her person at home while I was at the hotel. I didn't sleep at the hotel when I did work there. I didn't discuss my personal safety with Mr. Wood.

Redirect Examination, by Mr. Goldberg.

I voluntarily testified here this afternoon of my
681 own free will and accord.

681 **Recross-Examination**, by Mr. Knoeller.

I am not here under subpoena.

MARGARET THIE,

called as a witness on behalf of the respondents, having been first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My regular occupation is that of a waitress. I worked at the Plankinton House for over five
682 years, and am a member of the union. Mrs. Peggy Hehmeyer told the girls that she didn't believe the union could do anything for us, and that if we had any request to make, we should go to Mr.
683 Wood. She didn't say what he would do for us. A short while ago a notice was posted in the girls' dressing room. I don't know how Miss Hehmeyer found out about it, but she questioned us all individually to find out if we put it there or knew who did. She seemed quite angry. I heard her question the other girls. I knew that she accused two girls of posting it. Helen Martel, a waitress, was one of the girls who was accused of doing it. Before this Mrs. Martel did not work Saturdays or Sundays, but after she was accused of posting the notice she was put to work
684 on Saturday and Sunday. After that Mrs. Martel quit. Mrs. Hehmeyer told us that if we stick with Phil Valley we were crazy, and that we should stick with Mr. Wood. After the strike, and on or about the 17th of November, I went back to the hotel to clean up my locker. I spoke
685 to Peggy on that day. She told us we were fools for staying outside, and sticking with Phil Valley. That he was a gangster and a racketeer, and had changed his name three times. That we were

more or less branded for being outside, and that we would have a hard time finding another job. That we were branded as trouble-makers, and that the girls who stayed inside would naturally get the cream of the crop after everything was going in full swing. They would have a lifetime job, and that before I left the building I should look at the bulletin board where there was some sort of an agreement guaranteeing the girls a lifetime job.

Cross-Examination, by Mr. Knoeller.

I didn't take time to look at the bulletin board to see if there was a contract, because there were quite a number of girls there. I don't know whether there was like that posted on the bulletin board.

RUTH FAIRWEATHER,

called as a witness on behalf of the respondents, having been first duly sworn, on oath testified as follows:

686 I live at 2220 West Wisconsin avenue and am a waitress at the Plankinton Hotel. I was employed there for five months before the strike. I am a member of Local 122 and am out on strike. I had a telephone conversation with Mrs. Hehmeyer about going back to work, after which I went back to the hotel. I spoke to Mrs. Hehmeyer and Mr.
687 Wood. Mrs. Hehmeyer told me that it was entirely up to me and I could use my own judgment about that. Mr. Wood said the pickets were a bunch of fools and he couldn't understand why

they were doing it. He said they didn't have to worry very much, because the other hotels were backing him and Mr. Schroeder was sending him food by parcel post. I told Mrs. Hehmeyer that if I came back I would lose my seniority rights in
688 the union. Mr. Wood said they were forming their own independent union, and that they were taking out an injunction very shortly which would protect the ones on the inside. Mrs. Hehmeyer also said that she would inform the girls and men on the outside when this independent union did take place as to whether to come back or not. I was told that if I wanted to come back I would be taken care of, and I would be given a room, and I wouldn't have anything to worry about.

Cross-Examination, by Mr. Knoeller.

I did not fear for my own safety and that is not why I did not go back to work. My husband said that he would rather I did not go back, that he would rather I stayed out.

AL GAMBY,

called as a witness on behalf of the respondents, having been previously duly sworn, on oath testified as follows:

689 I am the president of Local 122. As such officer I take a general tour from hotel to hotel to see that the pickets are behaving themselves, to give instructions to the picket captain, to see that the picket line is conducted orderly. As president I am also the chairman of the executive board.

The board reprimanded Jack Heisdorf, Chuck McLaughlin and Joe Hofich because of their conduct arising out of strike activities and for getting into trouble. The board ordered that if anyone out there gets into trouble to take them right off the line or supervision of the line. Chuck
690 McLaughlin is no longer on the picket line, because he was arrested after we gave him one chance. I was on the picket line when, out of the clear sky, a can of tomatoes came down from the building, hit the sidewalk and rolled to the street. It landed halfway between where I was standing and the edge of the walk about eighteen or twenty inches from the building line. This was on the
691 sidewalk in front of the Plankinton entrance, opposite Gimbels. I picked the can up and gave it to the officer and told him that was what they were throwing out. The officer took it from me and said that he would have to turn it into the sergeant. The can was all dented. The officer did not go into the hotel at that time. I removed
692 Thomas O'Brien from the picket line when he got in trouble, because he had no business on the line. Before that time I did not know that he was on the line. At that time I also found out that he was not a union member. The executive board issued orders that after that that no one goes on the line who isn't a union member. I know someone was removed from the picket line because he
693 was drunk, but I do not know who it was and I did not remove him.

Cross-Examination, by Mr. Knoeller.

The orders that I refer to are oral. There was nothing reduced to writing. McLaughlin never was on a picket line. He was a captain until he got
694 into trouble. I was not in court when McLaughlin was tried for his acts of violence. People who do picketing duty are paid by the hour, once or twice
695 a week. I visit these different strike-bound plants or restaurants whenever I have time. I don't know offhand how many times I had been to the Plank-
696 inton Hotel. I don't know how many times I visited the Plankinton Hotel between November 2nd and November 7th. I know that it was more
697 than once. I never saw O'Brien in the picket line. Mr. Alexander keeps a record of those who are on the picket lines day after day. He is not an officer of the union; he is captain of the strike committee, appointed by Mr. Valley with the approval of the executive board. I never examined the records of the union as to who was doing picket duty from time to time. We have over 3,000 members in our organization, and I do not know all of
698 them. I don't know that O'Brien was on the picket line from November 2nd to November 7th. I think the only time the organization paid him was once. We do not inquire into the past history of the men that we place on the picket line, or with respect to their criminal records. I don't remember the day that the tomato can incident occurred, but I know it was between 9 and 10 in
699 the evening on a cold day. At the time the can came down I was standing right at the edge of the canopy towards the building talking to the officer.

I had been there a couple of minutes, and the first time I saw the can was as it struck the ground.
700 I know the can came from up above, but I didn't
701 see anybody throw it. I had no idea who threw the can, and I wanted the officer to make an investigation.

JOHN HEISDORF,

recalled as witness on behalf of the respondents, having been previously first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

703 I remember being on the picket line at the Plankinton Hotel when on two different occasions water came down from above. On about the second Sunday of the strike as I was standing at the Michigan street entrance talking to the officer on duty, while six pickets were parading up and down, when some water was splashed on the sidewalk. When I called this to the attention of the officer, he looked up if he could see any open window but stated he could see none. Six or seven minutes later two passersby had water splashed on them from the windows of the hotel.
704 The officer went into the hotel and made an examination of all of the rooms on the top floor but could find nobody. I made no report of this.

In February of this year I was elected vice-president of the union, which makes me also an assistant to Phil Valley. As his assistant, the Plankinton Hotel is within my jurisdiction.

Early this year I had occasion to go into the

hotel at about 10:30 in the morning. I had re-
705 ceived a complaint from an employee that some people were working in the kitchen who did not belong to the union. I went over to the hotel and into the kitchen for the purpose of asking questions. Mr. Wood came in, took me by the arm and persuaded me to get out of the kitchen. He told me that he didn't want me walking around through the hotel and that if I had any business to transact I was to transact it with him. He said that he didn't want Alexander around, either, and that Bournak had made arrangements with him that business agents were not to go into the hotel, but to do all their business with Mr. Wood. This occurred shortly after the check incident. I told him I had received reports that several peo-
706 ple working in the kitchen did not belong to the union. He stated that he would investigate, but I haven't heard anything more about it.

I remember that at the time that the cans of ice were tipped over, two of the colored girl pickets were on the sidewalk of the hotel. When the car pulled up to deliver the ice, I asked the fellows who were in the car that as long as there was a picket line at the hotel wouldn't they please take the ice back to the company and not deliver
707 it. As we were talking, seven or eight boys came out of the hotel with their uniform coats off and their sleeves rolled up and broke through the picket line, knocking down two of the colored
708 lady pickets.

After this happened there was a commotion.
709 During the course of that commotion the ice cans were tipped over. At that time I saw Alden backed

up to the left front fender of the automobile with both his arms pinned to his side by Jeske, the
710 fellow whom Alden is accused of hitting.

711 **Cross-Examination**, by Mr. Knoedler.

The man Bournak whom I mentioned in my testimony was formerly an organizer and secretary-treasurer of our local. He is no longer connected with it and has not been since March or April.

712 When the men came with the ice, I tried to peacefully persuade them to refrain from making delivery of the ice. They had carried in one can of ice before I got it. I was arrested shortly before November 10th for disturbance at the hotel.

MATT PECKMAN,

called as a witness on behalf of the respondents, being first duly sworn, on oath testified as follows:

713 **Direct Examination**, by Mr. Goldberg.

I am a member of Local 122 and a striking employee of the Plankinton Hotel. I worked there over twenty years. A short time before the strike,
714 some time during the month of October, 1939, I told Mr. Wood that we needed an assistant house man. Mr. Wood told me that he had a nice fellow that he wanted me to put on. I spoke to this fellow and sent him down to the union. I don't know whether he went to the union or not, but he came back and told me he didn't want to let him join. I took this up with Mr. Wood and he said that he would get along without an

715 assistant. I don't recall Mr. Wood speaking to
716 me about not applying to the union for help.

(It was stipulated that on November 4, Local No. 122 filed a petition for investigation and certification to determine bargaining rights with the National Labor Board at the Twelfth Regional Office at Milwaukee, Wisconsin. That no papers have been served by the National Labor Board on the complaint and that no further official action has been taken by that Board. The complainant agreed to the stipulation without admitting its admissibility or relevancy.)

717 **JOHN HEISDORF,**

recalled as a witness on behalf of the respondents, having been previously sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

718 I removed a fellow by the name of James from the Plankinton House picket line because he continually got drunk, created a disturbance on the picket line and the sergeant had complained to me about it.

(Respondents' Exhibit No. 57, being a form letter sent out by the Milwaukee Hotel Association, is marked, offered and received, together with stipulation that the complainant received a copy
719 of it on November 28; Respondents' Exhibit No. 58, being a letter under date of November 25th from the Independent Union to one of the employees, is marked and received without objection.)

EDNA BARRETT,

called as a witness on behalf of the respondents, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

My name is Edna Barrett, I am married, a member of Local 122, and was regularly employed at the Wisconsin Hotel. I have not been on picket
720 duty lately because I was injured there. I also did picket duty at the Plankinton Hotel. The week following the calling of the strike I saw Otis Gomillion at that hotel. He came swinging out of
721 the hotel. He touched me on the shoulder and said that we were fools. He said that he had $6,000,000 which says that all of us pickets will die and the worms will eat our bones before they sign.

No cross-examination.

GLADYS VAN,

called as a witness on behalf of the respondents, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

722 I worked for the Plankinton Hotel for about three years before the strike. About two months before the strike Mr. Wood told me that there was no truth to the rumors that he was going to cut the wages and that he was going to raise them as quickly as he could.

No cross-examination.

723 **JOHN ALEXANDER,**

recalled as a witness on behalf of the respondents, having been previously first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

The union permits the employment of student help, the number to be determined by the size of
724 the restaurant and the hotel. Before students are allowed to work the employer must notify the union as to whether he will employ one student or two, whatever the case may be. This student must come to union headquarters and get a "working slip," for which there are no initiation fees and no dues and no charges whatsoever. The
725 working slip is for the purpose of checking up on the number of students employed, since if we permitted employers to employ students indiscriminately without notifying the union, we might very soon have such a large number of students that they would displace our own legitimate food workers, members of the union, within the hotel or restaurant. By the issuance of working slips we know the exact number of students working at the hotels and restaurants. We never knew how many students the Plankinton Hotel hired, be-
726 cause Mr. Wood never called us to tell us that he needed students, but hired them himself without the previous permission, consent or knowledge of the union, nor did he notify us when he hired full-time workers, such as bellhops, housemen, kitchen help, etc. Such hiring of student help was contrary to regulations.

The union customarily permits students to work three hours at one meal, for which they receive two meals a day. Some employers make them work a little more and the students complain, but as long as it is not any longer than three hours we
727 cannot protect them. The students are not supposed to receive any pay for this, but sometimes the employer does pay them, to which we have no objection.

I have been a member of the hotel and restaurant union from 1920 to 1936. In 1936 I got my traveling card from New York to teach in a parochial school. From 1936 to 1938 I taught and also organized for the CIO, when I discovered that the CIO union was under the domination of the Communist Party, and after a long fight I brought the union into the American Federation of Labor.

728 I have worked in the hotel and resturant industry in all parts of the country and am familiar with the contracts in existence in the principal cities. Although the New York and San Fran-
729 cisco contracts are two of the best in the United States, the Milwaukee contract is way ahead of them. The advantages of the Milwaukee contract lie in the "seniority rights" and in the job "security rights," which have been called by Mr. Malcolm White, an attorney representing hotel interests in Milwaukee, "the declaration of the independence of the hotel and restaurant workers of Milwaukee." The wages in the Milwaukee
730 contract are absolutely higher than the New York
731 contract. These wages are higher than the Chicago contract. I believe the wages are higher

than in Detroit. The union would not submit to
732 a vote on a closed shop as recommended by the arbitration decision because in the first place we did not feel there was any necessity for a vote inasmuch as this was a continuance of the old contract and our demand for a week's vacation with pay was at least considered by the union as an amendment to the old contract. Our contract which was established in 1938 was governed by the laws existing at the time and not by the new laws that have been enacted since. The main reason was because we had a sad experience with
733 the Plankinton Hotel since the employer did not notify the union whenever he hired employees.
734 Since we knew a number of employees at the Plankinton who had been hired by the employer without the knowledge and consent of the union and were not members, we thought this factor would probably affect a vote in favor of the union. This was discussed and it was decided upon as a reason for not accepting this kind of a vote.
735 The union's decision not to accept the recommendation of the arbitration to submit to a vote was reached after discussing the effect of the Plankinton's hiring of non-union men and non-union women contrary to the terms of the contract. We felt that quite a number of employees hired by Mr. Wood were not members of the
736 union, and we felt this practice on the part of the employer might have the effect of having a larger vote than the legitimate union members
737 that were there. There was discussion about the

effect of the number of non-union employees hired by the Plankinton on a 75-per cent vote.

The union supplies men of superior skill at all times for the first-class hotels. We see to it that they get the best we have in the union. We have three thousand members, the best of whom are sent to the Plankinton, Schroeder and hotels of that type. We do this because we know that those
738 hotels are particular.

The first time I heard of any picket spitting on Mr. Wood was when he testified in this hearing. We never condoned such practice. We always take measures against one who may engage in
739 unpeaceful picketing. We discussed the matter at an executive board meeting after Mr. Wood's testimony.

Mr. Goldberg: "As long as the board is satisfied with that, I have no objection, but for the purposes of the record, we offer to prove that, if the union can learn the name of the individual who spit at Mr. Wood, appropriate action fitting with such ungentlemanly or unladylike conduct will be taken by the union."

740 **Cross-Examination,** by Mr. Knoeller.

I had been connected with the labor movement for about twenty years. I was never a member of the IWW nor was I an organized for the IWW, nor did I have any connection whatsoever with the IWW.

741 The CIO was dominated by the Communist party.

742 I joined the CIO in March or April of 1937, in Milwaukee. I have always advocated peaceful

743 picketing and peaceful persuasion. The Milwaukee Athletic Club had labor trouble during the year 1937. I was in charge of the pickets at that time. There was a sit-down strike there.

Mr. Goldberg: Then I object to this line of the questioning and move that it be stricken.

Commissioner Gooding: No, the answer may stand for what it will be taken for.

744 The union had no objection to students working at the various hotels in the city if the union was notified and permitted it. Our restaurant contract refers to students, and we apply the clause of the restaurant contract in the hotel con-
745 tract also. We had a gentlemen's agreement on the question of students.

(It was stipulated that there is no written provision in the hotel contract for students.)

I now recall that the hotel contract does not provide any specific exemptions for students. We
746 extend that privilege to them. The business agents are supposed to keep an eye on those matters.

Cashiers at many of the hotels in the city do belong to the union, except in those cases where the boss does not keep his word to notify the union to the effect that he employed a cashier. No ar-
747 rangements have been made after written contracts were entered into with various hotel managements permitting cashiers to work without joining the union. On numerous occasions men have been employed at the hotel without first calling the union and then sent to the union to become members, because of a stipulation in the contract

that if the union cannot furnish the type of worker desired by the employer within twelve hours, the employer then has the right to hire such employee, providing the union is notified. This applies also in cases of emergency. The employee then goes to the union, gets his work slip, starts to work for the employer and joins the union within fifteen days.

748 There have been exceptional cases where employees have been engaged at other hotels without first notifying the union. We have accepted such employees as members. This happened on a few occasions at the Plankinton. It very seldom happened at the other hotels.

749 I knew, starting in September of 1938, that Mr. Wood was employing people without first calling the union, and knew that that practice had continued practically to date. I cannot tell you the exact number of employees which the union accepted during this period in those cases where the union was not first notified that such employees had been employed by the Plankinton. I do not
750 recall, but there would be three or four, to my best judgment. These men were not sent to the union. Our business agents found them working there and asked them to join the union. None were sent by the management, that I know of.

751 They joined the union, paid their initiation fees, paid their dues, and many are members in good standing today.

Redirect Examination, by Mr. Goldberg.

No business agent has the right to change the terms of the contract. If Mr. Bournak agreed with Mr. Wood that a business agent could not go through the building to see if there were any violations, that was not done with the approval of the union.

752 It was in violation of the union contract itself.

Recross-Examination, by Mr. Knoeller.

Business agents had gone through the hotel and found employees who had been hired without the union office first being notified.

Redirect Cross-Examination, by Mr. Goldberg.

Those who we would discover were in the lobby
753 because Mr. Wood wasn't there to stop us. We would get reports from employees about hiring practices, and tried to investigate those reports.

754 **Examination**, by Commissioner Gooding.

There were many meetings, both membership and executive board meetings, including a meeting of the union membership immediately after the arbitration award was handed down and during the same week. It was a large meeting with about twelve hundred members present, and all of the employees were notified by notices posted in the kitchen, and by cards sent to them to their
755 homes and by the business agent, that is by word of mouth. I do not remember the exact date of the meeting.

Recross-Examination, by Mr. Knoeller.

That meeting was held the same week of the arbitration award. It is pretty difficult for me to remember the dates, because we held many meetings. We discussed the arbitration award, of course. I don't think it was more than a day or two afterwards.

756 **Redirect Examination**, by Mr. Goldberg.

The minutes of the meeting of the four arbitrators were taken up with the executive board, the negotiations committee and the local joint executive board. At those meetings there were discussions about the demands of the employers and about the effect of a vote on a closed-shop question.

757 This question of a 75 per cent vote was discussed, inasmuch as twenty-five hotels had already signed the contract, and since there is a clause in that contract which provides that if any more favorable clauses are allowed to another hotel, then the other twenty-five would receive the same benefits. We felt that with the open shop a greater number of employees within the hotels would be non-union people and that the union in six months would be destroyed. This was one of the most serious points that was discussed in most of the
758 meetings.

By the local joint executive board I refer to the body composed of three delegates from Local 122, Local 64 and Local 45, all affiliated with the International Union of Hotel and Restaurant Workers. This body has authority over the other exec-

ntive boards of the other locals, especially in strike situations. It pays the strike benefits, puts up the bail and pays the fine except where some people pay their own fines.

JACK HEISDORF,

recalled as a witness on behalf of the respondents, being previously duly sworn, was examined and testified as follows:

759 **Direct Examination** by Mr. Goldberg.

When it came to my attention that nonunion members were hired at the Plankinton Hotel I went to the hotel to investigate. In some cases it was necessary to remove the person from the job. The hotel tried to replace Mabel Smith, a union employee, with a nonunion employee. I took this matter up with Mrs. Smith, a housekeeper, and
760 Mr. Wood. Mr. Wood told me that he had discharged Mabel Smith for what he deemed just cause and replaced her with a colored lady who was on WPA. He told me he didn't call the union office because we couldn't give him the type of help that he wanted. He said that unless we accepted the new employee into the union he would not use a maid at all, because he would never put Mabel Smith to work. This new employee now has an application on file with the union.

761 Before we had an opportunity to act on this action the strike was called. I think she is out on strike. On several occasions busboys were sent to the office by Mrs. Hehmeyer. I complained to her about hiring busboys without first applying to

762 the union. The boys she sent over were not taken into the union. I don't know if they are still working, and since I wasn't allowed to go into the hotel to find out except if I sneaked in. I complained to Mrs. Hehmeyer about Charley Addis, who told me she thought he was in the union, but that if he wasn't she would send him to the office. Both Addis and Makoski told me they were not members of the union.

763 Makoski is the fellow who ran away with the picket sign. This happened approximately three weeks before the strike was called. I never told Mr. Wood or Mrs. Hehmeyer or anyone else at the hotel in an official capacity that they could hire employees themselves without applying to the union.

764 **Cross-Examination**, by Mr. Knoeller.

Makoski and Addis did appear at the union office and told me they wanted to apply, but they didn't have any money. I told them to come to the office on their following pay day, at which time I would discuss it further. I am not certain that it was Makoski.

I have the names on file in my book. I think that part of Mary Garner's initiation fee has been paid. We do not accept dues unless the initiation fee is paid and she is accepted by the body. She
765 is on the picket line now. Mr. Wood told me not to go through the hotel to perform any union business either in February or March, 1939. On
766 two occasions I went into the basement of the hotel in the custody of Mr. Hoffman, the assistant manager of the hotel, to see the maids. I was not

permitted at any time to go through the hotel. George Bournak told me that he had an understanding with Mr. Wood that he would not go through the hotel during business hours, but would confer with Mr. Wood in regard to union business. Mr. Wood told me the same thing. He
767 always treated me courteously and I never feared any violence from Mr. Wood or Mr. Hoffman.

Questioned by Commissioner Gooding:

I never asked Mr. Wood's permission to go into any department. I was walked out of the kitchen and told not to go through the hotel. On one occasion I received a complaint that a girl who had been working in the kitchen for approximately ninety days was not a member of the union. Mr. Wood told me that he would take care of it himself and that it wasn't necessary for me to go downstairs. I think the girl came to my office later, but I am not sure, because I didn't
768 know the girl, although Mr. Wood said that she would come to the office.

Redirect Examination, by Mr. Goldberg.

Mr. Wood did tell me of his arrangement with Mr. Bournak, but he didn't tell me that I was included in those arrangements. It is necessary
769 that we be permitted to go through the hotel because on lots of occasions we can't find Mr. Wood.

770 **Respondents rest.**

JOHN W. B. VAN HOUTEN,

called as a witness in rebuttal on behalf of complainant, being first duly sworn, on oath testified as follows:

Direct Examination, by Mr. Knoeller.

I am an employee in the office of Richardson, Robertson, Reeder & Stearns and am secretary of the Plankinton House Company. I was present at
771 a conversation between Mr. Wood and Mr. Knoop on November 4, 1939. Mr. Knoop seemed very much disturbed mentally and wanted to know what to do. Mr. Wood told him that it was up to him to decide. Knoop said that he didn't like to give his job up, but that he was afraid to go home. Mr. Wood told him that both he and his wife could stay at the hotel. Neither myself nor Mr. Wood stated that the hotel would not sign with the union even if they had to lock the doors, or that he would take Mr. Knoop to Chicago and get him a job if necessary.

772 **Cross-Examination**, by Mr. Goldberg.

I don't know what time Mr. Knoop came to the hotel, but I am sure it was not in the afternoon. It was two or three days after the strike. I do not know that he saw Mr. Wood on two separate occasions. No mention was made of a previous conversation the night before. As I stated, the young fellow was mentally disturbed and didn't know what to do, and Mr. Wood just told him that he would have to decide that himself.
773 Mr. Wood was sitting at the desk alongside the

cigar counter and I was right next to him. I believe that Mr. Knoop spoke first.

774 I don't recall how he started the conversation. He did not say that he had decided not to go to work and that he was going out on the picket line. I did not speak to him. Mr. Wood told him he could stay at the hotel. He did not use any language to dissuade Knoop from going out on the picket line. Mr. Wood told him he would have a

775 job, but he didn't tell him he would have a job for life and didn't say anything about a job if the hotel closed. He said nothing about going to Chicago with Mr. Knoop, and during the entire conversation no reference was made to the contract.

776 I did not make any statements at all during the conversation. I have made no memorandum as to the conversation and have not spoken about it to anyone.

777 **PEGGY HEHMEYER,**

called in rebuttal on behalf of the complainant, having been previously sworn, on oath was examined and testified as follows:

Direct Examination, by Mr. Knoeller.

I never made the statement attributed to me by Margaret Thie with respect to Helen Martel. I had agreed with her that during the summer months she could have off on Saturdays and Sundays to go fishing with her husband, but that in the fall, with business picking up, she would have to come in on the busier week-ends.

778 It was not a fact that Mrs. Martel quit her work because I forced her to work on Saturdays and

Sundays because of posting a notice in the dressing room. She stopped working at the Plankinton House about the 30th or 31st of October, just before the strike.

779 I did not discharge her for any union activity at the Plankinton House. I did not make the statements attributed to me by Margaret Thie on November 17th with reference to Phil Valley and the girls on strike. I did not state to her that there was a contract on the bulletin board guaranteeing any employees who stayed within the hotel a lifetime job. I don't know of any such contract that was posted on the bulletin board.

780 I was present at the conversation between Mr. Wood and Ruth Fairweather, but did not hear Mr. Wood call the strikers "a bunch of fools." I think he did say that he couldn't understand why they were out there. Mr. Wood said nothing about an independent union or taking out an injunction. I told Ruth Fairweather that I would give her a room. She had called up before coming down. She had not come in the day before because she didn't know if she was doing the right thing, and I told her that she must decide that question herself. I told her that she didn't have
781 to stay in the hotel, but that if she was afraid that I would take care of her and give her a room.

Questioned by Mr. Burns:

I did not tell Mrs. Fairweather that the hotel was forming an independent union of its own. Neither myself nor Mr. Wood made reference to the independent union in that conversation.

Examination (continued) by Mr. Knoeller:

I have seen and examined the 1937 labor contract (signature list marked "Complainant's Exhibit No. 59" and displayed to witness). I ex-
782 amined the contract before I put my signature to Exhibit 59, opposite the words "Coffee Shop." Mr. Wood asked me to read the 1937 contract, and after reading it, signed my name to the list.
783 After we had read both the 1937 and 1938 labor contracts, Mr. Wood instructed us to call the union whenever we needed help and to co-operate with the union in every way possible. I called the union during the years of 1937, 1938 and part of 1939. That was routine. I have called union help always, every week of the year, and the last two years that we have had contracts with them. All of my extra help are union members.
784 Charles Addis was employed as a student until this last September, when he told me he was not going back to school. I told him that he must join the union and I thought he did. Once or twice after that when I asked him if he had joined he told me that he did not. I told him that he must go down and join. He said that he didn't because he hadn't made up his mind whether he was going to school or not.

Gerald Klimek was employed about the middle of October, 1939, in an emergency because we needed a bus boy right away. I told him to join the union.

785 **Cross-Examination**, by Mr. Goldberg.

We didn't need much help because our help stuck with us. We called the union for help

every day because we have parties every day, when we need extra waiters. I called the union about a year ago in November and got help that wasn't what I wanted. I tried to employ help directly from the union office but after five or six attempts, I gave it up because I don't have a great deal of time to break in a boy for one or two days to see if he can work, and they just weren't the type of help that I wanted.

When I employ student help, I take employees who have no experience, but I have my pick of them, and I don't take the first one that is sent to me. I remember telling whoever answered the phone at the union that I wanted desirable help. Good, young, clean, bright boys and not somebody that was an exwaiter or not somebody that wasn't clean in appearance.

786 I did not complain to Jack Heisdorf or John Alexander that they were not giving me satisfactory bus boys. Mr. Wood told me to call the union when I needed help. He didn't tell me that he himself wasn't going to call the union in hiring help.

In the middle of October, one of our bus boys by the name of Frank Rand wanted to get an outside job and left an opening that I had to fill right away because we were busy. He gave me about a week's notice, but I did not call the union and ask them to send a bus boy.

787 I did not apply to the union for a man to replace Addis because he did not as yet quit school and I wasn't going to call a man until he was gone. When I asked Addis to join the union, I didn't call the union to tell them we were sending

him over.' I was very much surprised when I found out he hadn't joined.

788 I knew that all employees in order to work were required to be members in good standing except in an emergency. I do not consider one week's notice an emergency but I happened to be busy at the time and I didn't have time to get a new boy and this boy just came in. I was very glad to get somebody so easily. I didn't have time for one whole week to go to the phone and call Marquette 0290 and ask them to send over a bus boy.

789 I never checked up to determine whether Addis joined the union. I hired Makoski and called the union and told them. He was hired as an emer-
790 gency employee. I couldn't get free long enough to call the union and ask them to send over a man. He was sent in to me by his sister who works at the hotel. She is a waitress. I never
791 called Phil Valley and complained to him about bus boys that we got.

Neither Mr. Wood nor myself made any statement about an independent union when we talked to Margaret Thie: I don't remember her asking about her seniority rights, nor do I remember
792 any conversation about an injunctio.. Mrs. Thie spoke to me two and a half or three weeks ago. I remember my conversation with her.

793 Ruth Fairweather came into the hotel about two or three weeks ago at 6 o'clock in the evening. She spoke to me in the lobby. Mr. Wood did not join us until later. We did not sit down until Mr.
794 Wood joined us. I had asked Mrs. Fairweather why she hadn't come in the day before, and she

had told me that she had changed her mind and didn't think she would come in. I told her it was entirely up to her. Mr. Wood then walked toward
795 us and joined us. When I told Mr. Wood that she had decided not to come to work he said it was entirely up to her. Neither of us tried to persuade her to come in. I think some mention was made about starving us out and I said that we were eating pretty well, and I think I also made a joke about food being sent to us from Chicago.

796 Mr. Wood said that Walter Schroeder was sending him food by parcel post as a joke. We all laughed about it. I didn't hear him say that the other hotels were backing him. He did not discuss the company union or the independent union.

797 I never heard Mr. Wood say that the pickets were fools. He said to Ruth Fairweather and myself why he couldn't understand why they were out there. I am positive that Ruth did not mention seniority rights or her ability to get work elsewhere in the city or her getting in bad with the union.

798 I remember some conversation about a notice in the girls' locker room. I never saw it. I did ask three or four girls who posted it. I do not recall denying this is my previous testimony.

799 I think that I have a right to know what kind of notices are being posted in the girls' dressing room. I do not go down to the girls' dressing room. I can read English. I was told that there was a notice there and I asked the girls because I wanted to know what kind of a notice it was. I didn't even know it was a union notice. I don't

keep my clothes in the waitresses' dressing room. I didn't accuse any girls of posting the notice. I asked Helen Martel if she did. It didn't make a bit of difference to me who posted the notice, but I wanted to find out what the contents of the notice were.

I can tell you what date Helen Martel quit if I have a calendar. When I learned that a notice had been posted I asked who posted it. I was not angry. I heard about it when I was in the Sky Room. I wanted to know who posted it because I thought I could go to that person and find out what the notice was about. I don't have time to run downstairs during the busy noontime. I did not interrogate anybody. I questioned all the girls that I spoke to in the Sky Room. They are mistaken if they testify that I came down to the dressing room and asked about it there.

Redirect Examination, by Mr. Knoeller.

I hired Gerald Klimek because he walked in and asked me for work, and I told him that I needed him right away, but that he would have to join the union. I did not know that Mr. Addis was going to leave school.

Certificate of reporter.

(It was stipulated that Leo Makowski has been a member of the union since May, 1939; James Myrick has been a member since September, 1938; that Jeanette Pergolis has been a member since April, 1937; that Rudolph Stano has been a member since January 1, 1939, and that William J.

O'Connor was a member of the union until June, 1938, at which time he was suspended. This stipulation was with reference to the list of names appearing on page 4, Exhibit 24.)

HIRAM O. WOOD,

recalled as a witness on behalf of complainants, having been previously duly sworn, on oath testified as follows:

Redirect Examination, by Mr. Knoeller.

I was in court yesterday when Robert Knoop
807 testified. He was a bellman at the hotel. At the time of the conversation referred to Mr. Van Houten was present, but Mr. Richardson was not. Neither of us stated that we would lock the doors before we would sign with the union, and that if we had to lock the doors we would take Knoop
808 to Chicago for a job. We never posted any contract guaranteeing all the workers who returned a job for life.

I recall the conversation with Mrs. Hehmeyer and Ruth Fairweather about three and a half weeks ago. I did not call the strikers a bunch of fools, nor did I say I could not understand why they were doing it. Neither I nor Mrs. Hehmeyer stated that I would form an independent union or that we were taking out an injunction which would protect the ones on the inside. Mrs. Fairweather was told that she could come back any time that she wishes and be given a room if she'd choose to occupy it.

On November 1, 1939, the Plankinton House
809 had 188 employes. On page of Exhibit 24, the

No. 56 was put in to indicate the number of employees on that page. (There was a stipulation with respect to five of the employees having been union members.) Twenty-seven of the employees were hired since the strike. The list of parking station attendants being Exhibit No. 60, contains
810 names which also appear on page 4 of Exhibit 24. Besides seven of those there are some students' names that also appear on page 4 of Exhibit 24. The names of three supervisory employes, Katherine Smith, Leona Casper and Gertrude Raeuber and also as well there is the name of an Industrial Commission apprentice Harvey Effenberger. I recognize the names of John Flood and George Hackett as students.

811 (Stipulated that if Mrs. Hehmeyer were called to testify she would testify that Arnold Kowalski, William J. O'Connor and George were students.)

It is a fact that I have employed people in the hotel without first applying to the union for help. These were Wayne Banning and Robert Jeske. A friend of mine named Joseph Moon called me with reference to Wayne Banning, whom he said was a fine boy and whom he said he wanted me to
812 hire. I told him that I didn't have an opportunity, but I would look him over. He came, and I was impressed by his appearance and told him if he couldn't find work elsewhere he should come back to see me and I would try and see what I could do. He had to leave his job with Mr. Moon because of pending illness or confinement in his family and really was in serious straits as far as his finances were concerned. After he came

back several times I put him to work as a student under our efficient barman and also had him work on the parking lot and other odd jobs.

I told Frank Burgarino, the head of the Bartenders Union, about him, who told me to send him up to the union when he was ready to work
813 as a bartender. I spoke to him about it again after that, but the man never applied for a license because he never got to the point where I thought he could work alone.

With respect to Robert Jeske, I brought him in because I had a short-time job which was more or less personal in nature. I later tried to give him a job in the housekeeping department, but the union was reluctant to admit any more housemen, so we could not give him a job, as the fellow Peckman referred to in his testimony. Later on we had an opening as an assistant purchasing agent, so we put him to work on trial. There was a question in my mind whether he was eligible to union membership, or at least whether he should be required to join until he made good on this new job which he occupied only a few days before the strike. I spoke to George Bournak with regard to hiring help without first notifying the union, and he told me the union was interested primarily in having every employee a member.

814 Mr. Goldberg: I object to conversations with George Bournak as hearsay. The man is no longer a member of the union. He was asked to resign by the union, and in view of the circumstances we have in the record I don't think he can be taken as a representative of the union, and

therefore any testimony as to conversations with him would be hearsay.

Mr. Knoeller: Mr. Heisdorf testified that Mr. Bournak was a member of the union until March or April, 1939.

Commissioner Gooding: Objection overruled.

This conversation took place immediately after the 1938 contract at the Plankinton House in connection in engaging staff at the Kilbourn Hotel. We were opening that hotel in November, 1938, and I was somewhat concerned about the crew. I asked Bournak if we could engage our own crews and have them join the union later. He said that if he couldn't furnish people to satisfy me we would have to do it that way. Later on, when we were ready, I called Bournak and he sent some people over. We engaged some of them.
815 With respect to the balance, he told me I could hire them and he would come over with applications for them. After the 1938 contract, Bournak told me that the requirement that cashiers join the union would be overlooked at the Plankinton.

Kobina Block, Clara Heitman, Grace Guse, Margaret Wohla and Dorothy Walgreen are cashiers at the Plankinton House. I do not believe they are members of the union; but I do not know. I did not hire Mary Garner. She applied for membership in the union and has paid the first installment on her initiation fee, holding the receipt for
816 it. Mary Garner was hired to displace a discharged girl. I don't recall speaking to Mr. Heisdorf with respect to her. She was hired by the housekeeper. I do not recall, but this may have happened as Heisdorf stated it happened.

Dan Christl was hired in September, 1939, without first notifying the union; but he was told and did become a member of the union.

817 During the year 1939 I wrote several letters to the union with respect to the union status of the employees in accordance with my arrangement with Mr. Bournak that if he would stay out of the departments; and not interfere with the work, I would collect the dues for him. Mr. Heisdorf confirmed his understanding of the arrangement with Bournak when he got his position as supervisor of the Plankinton House.

(Exhibits 61-65 marked by the reporter and introduced by stipulation as being correct copies of the original letters sent to Local 122 during 1939.)

818 to 821 (Testimony omitted because it relates to interstate commerce, which is not in issue on this appeal.)

822 (Complainant's Exhibit 66 received in evidence, being the vouchers and invoice bill from the printer with respect to the $26.00 check previously referred to in the testimony.)

823 There are now 148 employees working at the Plankinton House. Loretta Sohn, to whom previous reference has been made, has told me that she is a member of the union. Julius Cook, whose name appears on Exhibit 60 and to whom previous reference has been made, is a parking station attendant.

824 When I stated that I was advised not to volunteer information, it was because you told me not to answer too quickly and before the question was finished. I have not withheld any information whatsoever during the course of these proceedings.

Recross-Examination, by Mr. Goldberg.

Exhibits 61-65 have reference to collection of delinquent dues. They have nothing to do with
825 the hiring of employees. I was given the names of persons who are delinquent in dues by the various business agents, who asked me to see that the members paid, since article 2 of the agreement provides that all employees subject to the jurisdiction of the union shall be and remain good
826 members in the union in order to retain their jobs. My arrangements with Mr. Bournak were oral. I knew that Mr. Valley was superior to Bournak and signed the contract for the union, but I didn't know he was the business agent of the union. Exhibit 66, the invoice bill, was received at about the time we issued the check.

827 I don't know if I gave the check to Mr. Bournak. I did not give Mr. Bournak two checks. (Respondents' Exhibit 67 marked by the reporter for identification.) I never saw Exhibit 67 that I know of. (Exhibit 67, being invoice, received in evidence.) I believe that we had 188 employees on November 1st.

(Mr. Goldberg asks Board to read page 2 of the
828 complaints worn to by Mr. Richardson, and paragraph 3 thereof, alleging that there were 160 employees, of which number 83 had either returned to work or continued to work, and that such complaint was sworn to on November 18, 1939.)

I do not know whether the list of 188 includes employees who were hired during the strike. I have no instrument in writing wherein the union agreed to exempt cashiers from the effect of the

829 contract. I don't recall the language which was used by Mr. Heisdorf in confirming his understanding of my arrangement with Bournak. I don't recall the exact language I used when I spoke to Ruth Fairweather about the pickets, but I think I told her that I was sorry they felt that they had to do that. I don't recall Ruth Fairweather's mentioning her loss of seniority rights if she came back.

830 (Stipulated that the Alexander mentioned on Exhibit 6 is John Alexander, who testified in these proceedings and who is the present union officer that testified in the morning, and that the name Desotole is the party mentioned in connection with the campaign literature previously referred to in the testimony.)

Questioned by Commissioner Gooding:

There was no request by the union during the life of these contracts that we discharge any employee at the Plankinton House because he was delinquent in his dues or because he was not a member of the union.

Redirect Examination, by Mr. Knoeller.

830-831 (Testimony omitted because dealing with interstate commerce, which issue is not pertinent.)

Complainants rest.

832 **JOHN HEISDORF,**

recalled as a witness on behalf of the respondents, having been previously duly sworn, on oath testified as follows:

Direct Examination, by Mr. Goldberg.

I did not enter into any arrangement or approve any arrangement whereby the Plankinton House could hire any employees without applying to the union.

Respondents rest.

Mr. Goldberg: I move the proceedings as to the Laundry Workers and Bartenders, Operating Engineers, and Milwaukee Building Trades Council be dismissed, because the complainant has not met
833 the burden of proof as to the charges against said four organizations. I move the proceedings be dismissed against the Hotel and Restaurant Employees International Alliance, Local 122, because no unfair labor practice as charged has been proven concerning that organization. I move that the proceedings as to Phil L. Valley be dismissed for the same reason—no charges have been proven and no violations of any law. I move that the proceedings as against John Alexander be dismissed, and I make separate motion referring to John Alexander and Jack Heisdorf for the same reasons. I also renew all the motions I made at the beginning of the proceedings. I don't think it is necessary to set them forth at length. It will only encumber the record.

834 (Discussion with respect to briefs.)

835 **Certificate of official reporter.**

836 **Cover.**

837- **FINDINGS OF FACT, CONCLUSIONS OF**
846 **LAW AND ORDER.**

(Venue and title omitted.)

This matter coming on to be heard, and the full Board having heard the testimony, arguments of counsel, and being advised in the premises, make
838 and file the following findings of fact, conclusions of law and order:

FINDINGS OF FACT.

1. The Plankinton House Company is a corporation duly organized under the laws of the State of Wisconsin, having its principal office at 609 North Plankinton avenue, Milwaukee, Wisconsin. It operates the Plankinton House and the Kilbourn Hotel, both located in the City of Milwaukee, Wisconsin, together with three automobile parking lots in said city.

2. Hotel and Restaurant Employees International Alliance, Local No. 122, Bartenders International League of America, Local No. 64, International Laundry Workers, Local No. 174, International Union Operating Engineers, Local No. 311, are voluntary unincorporated associations, each of which is affiliated with the American Federation of Labor.

3. The Milwaukee Building Trades Council is a central labor organization composed of various labor unions in the City of Milwaukee, having as members persons employed in the building trades, all of which labor unions are affiliated with the American Federation of Labor.

4. The Independent Organization of the Plankinton House Employes is an unaffiliated labor organization admitting to membership all employes of the Plankinton House Company, excepting officers, directors, executives and supervisors, and was organized on the 21st day of November, 1939.

5. On the 16th day of June, 1938, the complainant, Plankinton House Company, entered into a collective bargaining contract with the Hotel and Restaurant Employees International Alliance, Local No. 122, International Laundry Workers, Local No. 174, Bartenders International League of America, Local No. 64, International Union of Operating Engineers, Local No. 311, and the Milwaukee Building Trades Council, which contract
839 covered wages, hours and working conditions governing the employes of the Plankinton House Company, employes at the Plankinton House and the Kilbourn Hotel, and provided as a condition of such employment that all employes coming within the terms of said contract must be and remain members of one of the respective unions so long as they were employed by the Plankinton House Company.

6. It was further provided that said contract was to continue for a period of one year, ending

on the 15th day of June, 1939, and for consecutive one year renewals unless either party served notice in writing on the other party at least thirty days before the expiration of such year, that such party desired to terminate the agreement at the end of such contract year. It was further provided that either party might notify the other party in writing within thirty days of the date of termination of such contract that it desired the contract continued for an additional year, and that such party desired to negotiate hours, wages, and working conditions for the following contract year. If such notice were sent, the contract was to continue in force and the terms agreed upon by virtue of such subsequent negotiations were to be retroactive from the date of the commencement of any such year. If the parties could not reach an agreement through negotiation on or before thirty days after the termination of the preceding contract year, the difference was to be submitted to arbitration in accordance with the procedure prescribed by the contract. Such arbitration was to be final and binding on both parties, but if either party were dissatisfied with the arbitration award, the right to strike or lock-out was reserved to the union and the company respectively.

7. On May 15, 1939, the Hotel and Restaurant Employees International Alliance, Local No. 122, International Laundry Workers, Local No. 174, International Union Operating Engineers, Local No. 311, and the Milwaukee Building Trades Council, by their attorney, I. E. Goldberg, notified the

complainant company in writing that the named
840 unions desired to continue the contract dated June 16, 1938, for an additional year, but desired to negotiate improved hours, wages, working conditions and the establishment of vacations with pay for the contract year commencing June 16, 1939.

8. On May 16, 1939, the Plankinton House Company, by a written notice delivered to Phil L. Valley, and addressed to Local No. 122, Hotel and Restaurant Employees, Local No. 174, Laundry Workers, and Local No. 64, Bartenders League of America, stated that it desired to continue the contract for an additional year, and desired to negotiate hours, wages and working conditions for such additional year.

9. Thereafter, the unions proposed certain changes in the contract existing between themselves and the Plankinton House Company, and on July 1, 1939, the Plankinton House Company, together with other hotels involved, proposed changes that they desired in said contract.

10. Negotiations between the parties failed to result in any agreement, and on July 11, 1939, the unions involved, by their attorney, I. E. Goldberg, notified the company in writing, demanding arbitration of the dispute relating to the terms of the contract for the ensuing year, and advised the company that Hotel and Restaurant Employees International Alliance, Local No. 122, had designated Phil L. Valley and I. E. Goldberg as its representatives on such arbitration board. Thereafter the Plankinton House Company, in conjunction with other hotels, named as representatives

on the arbitration board Clark M. Robertson and Lewis F. Thomas. The four arbitrators so appointed were unable to agree on a fifth member of said board, and a request was made to the Wisconsin Employment Relations Board that it designate a fifth member of a board of arbitration to arbitrate a dispute existing between the Plankinton House Company, operating the Hotels Plankinton and Kilbourn, and other companies operating hotels, and Hotel and Restaurant Employees International Alliance, Local No. 122, Bar-
841 tenders International League of America, Local No. 64, International Union Operating Engineers, Local No. 311, International Laundry Workers, Local No. 174, and Milwaukee Building Trades Council. On September 8, 1939, pursuant to written request therefor, the Wisconsin Employment Relations Board appointed Alfred H. Handrich as the fifth member of such arbitration board. Thereafter I. E. Goldberg resigned as a member of the arbitration board and was succeeded by Arthur Johnson, designated by the unions to succeed him.

11. Mr. I. E. Goldberg is a duly licensed and practicing attorney in the State of Wisconsin, located in the City of Milwaukee, and during all of the negotiations between the unions and the complainant, Plankinton House Company, and in the proceedings before the arbitration board above described, acted as the attorney for all of the unions party to said contract, and at the time of the hearing before the arbitration board, consented that said Board determine whether its

award would affect all of the unions party to the contract, or only the Hotel and Restaurant Employees International Alliance, Local No. 122.

12. On October 30, 1939, the board of arbitration issued its award, Messrs. Valley and Johnson dissenting. The award consisted of a complete revised contract covering wages, hours and working conditions affecting employes of the Plankinton House and Kilbourn Hotels and other hotels then in dispute with the Unions, such contract to be effective with respect to the company and the five respondent unions.

13. On November 1, 1939, the Plankinton House Company notified the Hotel and Restaurant Employees International Alliance, Local No. 122, and the International Laundry Workers, Local No. 174, by letter addressed to I. E. Goldberg, attorney for such unions, that it was ready and willing to execute a contract in accordance with the terms of the arbitration award.

14. On November 2, 1939, in the afternoon, the
842 employes of the Plankinton House Company at both the Plankinton House and the Kilbourn Hotel, went on strike.

15. Prior to calling such strike, the employes of the Plankinton House Company did not vote by secret ballot to call such strike.

16. Immediately after the strike was called, picketing was engaged in at the three entrances to the Plankinton House. Picketing was carried on by the members of all of the unions involved,

and pickets carried banners bearing the names of all respondent unions.

17. Phil L. Valley is business manager of Hotel and Restaurant Employees International Alliance, Local No. 122, and as such business manager notified Marquette University and the Milwaukee School of Engineering, directing that all students working at the Plankinton House for their meals be ordered to immediately discontinue such work, and that unless such students did discontinue work at the Plankinton House that the union would be forced to stop the employment of university students working at other hotels and restaurants in the City of Milwaukee which had collective bargaining contracts with Local No. 122.

18. That ever since the strike the Plankinton House and the Kilbourn Hotel have continued to operate with the new employes replacing the striking employes.

19. On November 4, 1939, union pickets, by means of force, prevented delivery to the Plankinton House of floral decorations by one Joseph Mueller, an employe of August F. Kellner Company. That as a result of the altercation at said time Jack Heisdorf, vice-president of Local No. 122, Hotel and Restaurant Employees International Alliance, and Charles McLaughlin, assistant to the secretary of Local No. 122, were arrested, and on November 17, 1939, convicted of assault and battery, McLaughlin being filed $10.00 and costs and Heisdorf being fined $5.00 and costs, the sentence against Heisdorf being suspended and he

843 was placed on probation for thirty days. That Local No. 122 provided counsel and bail for both Heisdorf and McLaughlin and paid McLaughlin's fine.

20. Charles McLaughlin returned to the picket line immediately after his arrest, and on November 17, 1939, assaulted one Lester Raasch, an employe of the Plankinton House, was again arrested, convicted and fined $25.00 and costs and the union again provided him with counsel and paid such fine.

21. On November 4, 1939, two salesmen representing the Automotive Electrical Association, who were attempting to deliver displays and samples to the Plankinton House, were, by means of force, prohibited from making the delivery by Phil L. Valley and a number of pickets.

22. On November 10, 1939, Jack Heisdorf, Charles Alden, striking employe of the Plankinton House, and other pickets, by the use of force, prevented delivery of ice cubes to the Plankinton House, and in the course of the attempted delivery, Charles Alden assaulted Robert Jeske, then an employe of the Plankinton House.

23. On November 17, 1939, Paul Ziebell, an employe of the Plankinton House, was assaulted by James O'Brien, a picket employed by the union, and stationed on the picket line at the Plankinton House. O'Brien was arrested, convicted and fined five dollars and costs.

24. On November 14, 1939, Edward Knopf, an employe of the Plankinton House, was assaulted

by John Thomas O'Maher, a picket stationed by the union at the Plankinton House, and a striking employe of the Plankinton House.

25. On November 17, 1939, Rudolph Stano, an employe of the Plankinton House, was assaulted by Joseph Hofich, a picket stationed at the Plankinton House by the union, and Hofich was arrested, convicted, and fined five dollars and costs.

26. On November 17, 1939, Thomas James, an employe of the Plankinton House, was assaulted
844 by Larry McAllen, a picket stationed at the hotel by the union, and fined five dollars and costs.

27. Throughout the strike, the City of Milwaukee caused to be stationed at the Plankinton House throughout the twenty-four hours of each day, six police officers for the purpose of maintaining order.

CONCLUSIONS OF LAW.

The Board finds as conclusions of law:

1. That the contractual relationship existing between the Plankinton House Company and the respondent unions was terminated by the respondent unions on the 2nd day of November, 1939, by the refusal of said unions to accept the award of the board of arbitration, and their act of calling a strike at the Plankinton House and the Kilbourn Hotel.

2. That the respondent unions are guilty of unfair labor practices by cooperating and engaging in promoting and inducing picketing and boycotting, all being overt concomitants of a strike,

without first obtaining the approval of the majority of the employes of the Plankinton House Company by a secret ballot.

3. That all of the former employes of the Plankinton House Company who went out on strike and who remained out on strike, have been parties to an unfair labor practice by cooperating and engaging in a strike without first obtaining the approval of a majority of such employes.

4. That the following named persons, by reason of threats and assaults made by them to and on employes of the Plankinton House or persons seeking to do business with the Plankinton House, or by misdemeanors committed by them arising out of the controversy between the respondent unions and the complainant, Plankinton House Company, are guilty of unfair labor practices. Phil L. Valley, Jack Heisdorf, Charles McLaughlin, Charles Alden, James C. O'Brien, John Thomas O'Maher, Joseph Hofich and Thomas James.

845 Upon the basis of the foregoing findings of fact and conclusions of law the Board, pursuant to Section 111.07 (4) of the Wisconsin Statutes, makes the following

ORDER.

It is ordered that the respondent unions, Hotel and Restaurant Employees International Alliance, Local No. 122, International Laundry Workers, Local No. 174, Bartenders International League of America, Local No. 64, International Union of Operating Engineers, Local No. 311, and the Mil-

waukee Building Trades Council, the officers, members, agents, successors and assigns of each, shall:

1. Immediately cease and desist from:

(a) Engaging in promoting or inducing picketing at or near the Plankinton House or the Kilbourn Hotel;

(b) Attempting to hinder or prevent by threats, intimidation, force or coercion of any kind the pursuit of lawful work by employes of the Plankinton House Company;

(c) Boycotting in any way the Plankinton House Company.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the act:

(a) Post notices to their members in conspicuous places at the union headquarters that the union has ceased and desisted in the manner aforesaid, and that all officers, members and agents of the union are to refrain from engaging in promoting or inducing picketing and boycotting of the Plankinton House Company, and also to refrain from attempting to hinder or prevent by threats, intimidation, force or coercion of any kind the pursuit of lawful work by employes of
846 the Plankinton House Company.

(b) Notify the Board in writing forthwith that steps have been taken by each of the respondent unions to comply herewith.

Given under our hands and seal at the City of

Madison, Wisconsin, this 15th day of February, 1940.

Wisconsin Employment Relations Board,
By Henry C. Fuldner,
Chairman.
L. E. Gooding,
Commissioner,
R. Floyd Green,
Commissioner.

847–854 **DECISION.**

(Venue and title omitted.)

847 The Board has today made and filed findings of fact, conclusions of law, and an order in the above-entitled matter. The findings of fact quite fully disclose the situation between the parties existing as a result of collective bargaining agreements between the hotel on the one hand and the respondent unions on the other. During the year commencing June 16, 1938, and ending June 15, 1939, wages, hours and working conditions of the employes of the hotel were regulated by a single contract between the hotel and Locals 122, 174, 64, 311 and the Milwaukee Building Trades Council. Near the end of the year, I. E. Goldberg, of the firm of Padway, Goldberg & Tarrell,
848 was retained by all of the unions parties to the hotel agreement, to represent such unions in negotiations contemplated, relating to changes in the contract for the ensuing contract year. All of the unions, with the exception of Local No. 64, on May 15, 1939, by letter from Mr. Goldberg to the

hotel, gave notice to the employer that they desired the contract to continue for an additional year, but desired to negotiate improved wages, hours, working conditions and vacations with pay. A similar notice was sent by the hotel to Phil L. Valley, business agent of Local No. 122. This notice, in addition to Local 122, was also addressed to Local 174 and Local 64, but was not delivered to any officer or representative of such locals. As a result of such notice, negotiations were carried on between the parties. Proposed revisions to the contract were submitted on behalf of all of the unions parties to the original contract, and the hotel also submitted to the unions proposals that they desired incorporated in the contract for the following year. All of the unions took part in the negotiations between the parties, such negotiations failing to result in any agreement. On July 11 Mr. Goldberg wrote to the representatives of the hotels, apparently on behalf of all of the unions that were parties to the contract. In this letter he said: "Our clients, the involved unions, and our office have given this a great deal of consideration and study." In the same letter he demanded on behalf of Local 122 arbitration of the dispute, and designated representatives selected by such local as members of the arbitration board. The hotel, in response to this demand, designated its representatives. The four members of the arbitration board, being unable to agree on a fifth member, joined in a request to the Wisconsin Employment Relations Board that it appoint a fifth impartial member of

the board of arbitration. This request to the Wisconsin Employment Relations Board was signed by J. E. Goldberg and Phil L. Valley, and requested the appointment of an arbitrator to arbitrate a dispute existing between Local 122,
849 Local 64, Local 311, Local 174, the Milwaukee Building Trades Council, and the operating companies of certain hotels, among others the Plankinton House Company.

It clearly appears from these facts that all parties to the dispute up to the first day of the hearing before the board of arbitration were of the opinion that this was a single contract, and that the company was negotiating with all of the unions for changes in such contract, and that if there was any failure on the part either of any of the unions or of the employer to give adequate notice, that such failure had been waived by the action of the parties in the negotiations they carried on, and was specifically waived by Mr. Goldberg on behalf of the unions by agreeing before the board of arbitration that such board might determine whether its findings affected all of the unions party to the contract, or only applied to Local No. 122. This matter, at any rate, was submitted to the board of arbitration, and the arbitration award was effective as to all parties to the contract.

The award of the board of arbitration was in the nature of a proposed contract. The proposed contract provided in Article II as follows:

"Article II. The union shall be the exclusive bargaining agent for the employees

of the employer which come within the jurisdiction of the respective unions. If the unions, at their option, desire an all-union agreement, all employees in each hotel covered by this contract subject to the jrisdiction of the union, a party hereto, shall be and remain members in good standing in the union in order to retain employment, provided that three-fourths or more of the employees in the proper collective bargaining unit (each hotel considered separately) shall have voted affirmatively (by secret ballot) in favor of an all-union agreement in a referendum conducted by the Wisconsin Employment Relations Board.

"In the event three-fourths or more of the employees of the proper collective bargaining unit in any hotel covered by this agreement shall have voted in favor of an all-union agreement as provided in the preceding paragraph, such employer agrees to notify the business representative for the Union when in need of an employee and if the union cannot furnish an employee acceptable to the employer within twelve hours, and also in cases of emergency, the employer may employ any person not a member of such union, provided such employee shall become a member of such union within fifteen (15) days from the date of the employment. Employer in such case also agrees not to keep in his employ any employee now a member, or who hereafter becomes a member of the union, who relinquishes or loses his membership in the union.

"In the event of an all-union agreement as herein provided, new members will not be obligated to pay any greater or further initiation fee, dues or other charges, assessments,

or donations, not required by persons now members of the Union."

The requirement in the proposed contract that before the closed shop provision should be effective, there should be a referendum conducted by the Wisconsin Employment Relations Board at which three-fourths or more of the employes of the hotel approve such provision, was objectionable to the unions. This award was handed down on October 30, 1939. The hotel notified Mr. Goldberg, the attorney for the union, that the hotel would accept such an award, and execute a proposed contract. On the following day, the employes of the hotel went on strike.

It must be remembered that a contract between unions and an employer is entered into primarily for the purpose of stabilizing employment relations in the plant or industry over a period of time, and that such a contract must of necessity be subject to a more liberal interpretation than some other contracts might receive. It has seemed to us that in this case, the principal dispute between the parties was over the closed shop provision contained in the 1938-39 contract, and that this provision affected all of the parties to the contract equally. All of the parties negotiated with reference to it, and it does not seem possible that under the circumstances we have in this case, that without specific agreement between the company on the one hand, and any one of the unions on the other, that the contract could continue with one union and not with the rest of them.

The respondent unions take the position that both parties having elected to continue the contract for an additional year, such contract con-
851 tinues and binds both parties to the agreement, this even though the union should see fit to go out on strike in order to enforce what it feels to be its rights. If it is the contention of the respondent unions that the contract continues and is enforceable, then their remedy would not be striking to compel the employer to accede to their demands, but would be a proceeding in court to enforce the provisions of the contract or before the proper labor relations board to compel the employer to abide by the provisions of such contract.

It seems to us that the correct interpretation of this contract is that it was to continue pending negotiations between the parties, that if negotiations were unsuccessful, it would continue until such time as there was an award from a board of arbitration properly appointed, that after the award by the board of arbitration, both parties might accept such an award and be bound by it, or either party might refuse to accept the award, repudiate the contract, and that thereafter there would be no contractual relationship between the parties. In this case, all of the unions involved saw fit to repudiate the contract, and refused to be bound by the terms laid down by the board of arbitration. This they had a perfect right to do, but having done so, the result is that there is no contractual relationship now in existence.

Before going on strike, no vote by secret ballot authorizing the strike, was taken among the employes of the hotel. This, under Chapter 111 of

the Wisconsin Statutes, is clearly an unfair labor practice, and all of the employes taking part in such strike are necessarily parties to such unfair labor practice. The result to the employes, under Section 111.02 (3) of the Wisconsin Statutes, is that such employees have lost their status and are no longer employes of the Plankinton House Company. To many this result may seem to be a
852 harsh penalty, but it is a result that flows naturally from this law, and is something which this Board as an administrative board, has nothing to do with. Here the unions took the position that Chapter 111 of the Wisconsin Statutes did not apply to them, that they might have a closed shop contract without complying with the provisions of this law or the award of the board of arbitration. We feel that the unions and the employes involved, in taking this position, were entirely wrong, and that as a result of the position they have taken, and particularly their failure to comply with the requirement that a vote be taken before striking, has resulted in the loss of their status as employes.

The respondent unions contended also that the Wisconsin Employment Relations Law was unconstitutional. This Board is primarily an administrative board, and applies and administers the law as written by the legislature. The validity and constitutionality of legislative enactments is properly a matter to be passed upon by courts and not by an administrative board created by a law alleged to be unconstitutional. We, therefore, do not feel called upon to pass upon the question of constitutionality raised by the respondent unions.

The respondent unions also allege that this Board had no jurisdiction to hear and determine the matters raised by the company's complaint for the reason that the hotel was engaged in interstate commerce, and that all questions relating to relationship between employer and employes in such cases are under the jurisdiction of the National Labor Relations Board. Our first answer to this is that the evidence does not disclose that in the operation of the Plankinton House or the Kilbourn Hotel, there is any close and substantial relationship to interstate commerce. All of the business conducted by the hotel is local in character and in no way affects the free flow of commerce between states, in such a close and intimate fashion as to be subject to federal control.

853 In addition, the National Labor Relations Act has no provision, and congress has never attempted to legislate in reference to unfair labor practices committed by employes, and the administrative board enforcing such Act has continuously and constantly in many decisions taken the position that whether there are any such unfair practices by employes is not a question properly to be submitted to that Board but must be determined by some tribunal other than the National Labor Relations Board. Wisconsin, by the passage of the Wisconsin Employment Relations Law, has created a tribunal authorized to pass upon and determine questions raised by activities of employes, and it seems to us clear that any state, under its police powers, may regulate conduct of strikers so as to prevent a breach of the peace, assist in stabilizing relationship between

employer and employe, and protect the rights of employes who desire to do so, to work.

The respondent unions also contended that the employer in this case was guilty of certain unfair labor practices, that by reason of such practices did not come before the Board with clean hands, and that therefore the Board should dismiss the complaint. Some testimony was offered to substantiate the contention that certain unfair labor practices had been committed by the employer. It is clear, however, that in this case, the strike was not caused by reason of any such unfair labor practices, even assuming that the evidence might have been sufficient to have required this Board, in a proper proceeding, to order the employer to cease and desist such practices. We are not, at this time, stating that the evidence offered would have been sufficient for that purpose, but are merely stating that even though it would have been sufficient, it would not necessarily follow that the complaint must be dismissed.

This statement is made and is filed as a part of the record in this case for the purpose of briefly explaining the reasoning of the Board in arriving
854 at the conclusions it has arrived at, and in determining the order to be entered in this case.

Wisconsin Employment Relations Board,

By (Henry C. Fuldner)
Henry C. Fuldner, Chairman

(L. E. Gooding)
L. E. Gooding, Commissioner

(R. Floyd Green)
R. Floyd Green, Commissioner.

855-856 **AMENDMENT TO FINDINGS OF FACT AND ORDER.**

(Venue and title omitted)

A decision in the above-entitled matter having been made and filed on the 15th day of February, 1940, and it appearing that by inadvertence certain errors were made in Finding of Fact No. 26 and Conclusion of Law No. 4 in said decision.

Now, therefore, it is

Ordered

That said Fnding of Fact No. 26 and Conclusion of Law No. 4 be and the same are hereby amended to read as follows, to wit:

Finding of Fact No. 26.

On November 17, 1939, Thomas James, an employe of the Plankinton House was assaulted by Larry McAllen, a picket stationed at the hotel by the union, and said Larry McAllen was thereafter arrested, convicted and fined five dollars and costs.

Conclusion of Law No. 4.

That the following named persons, by reason of threats and assaults made by them to and on employes of the Plankinton House or persons seeking to do business with the Plankinton House, or by misdemeanors committed by them arising out of the controversy between the respondent unions and the complainant, Plankinton House Company, are guilty of unfair labor practices. Phil L. Val-

ley, Jack Heisdorf, Charles McLaughlin, Charles Alden, James C. O'Brien, John Thomas O'Maher, Joseph Hofich and Larry McAllen.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of February, 1940.

Wisconsin Employment Relations Board,

By (L. E. Gooding)
L. E. Gooding, Commissioner

(R. Floyd Green)
R. Floyd Green, Commissioner.

857–860 **Direction of election.**

861–862 **Certificate of Wisconsin employment relations board.**

863 **Sample ballot.**

864–866 **List of eligibles.**

867–869 **Result and certification.**